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Contents

Federal Register
Vol. 81, No. 65
Tuesday, April 5, 2016

Agricultural Research Service

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19549

Agriculture Department

See Agricultural Research Service
See Food and Nutrition Service

Bureau of Consumer Financial Protection

RULES
Submission of Credit Card Agreements, 19467
NOTICES
Meetings:
  Community Bank Advisory Council, 19582–19583

Census Bureau

NOTICES
2017 Census of Governments, 19550–19551

Centers for Disease Control and Prevention

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19607–19609

Civil Rights Commission

NOTICES
Meetings:
  Maryland Advisory Committee, 19550
  Michigan Advisory Committee, 19549–19550

Coast Guard

RULES
Drawbridge Operations:
  Inner Harbor Navigation Canal, New Orleans, LA, 19488
Safety Zones:
  Bayou Teche, Crude Oil Spill, Jeanerette, LA, 19488–19490

Commerce Department

See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19581–19582

Defense Department

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Contractors' Purchasing Systems Reviews, 19605–19606
  Right of First Refusal of Employment, 19606–19607
Meetings:
  Defense Business Board, 19583

Education Department

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  2016–17 Baccalaureate and Beyond Longitudinal Study Field Test, 19583–19584
  Accrediting Agencies Reporting Activities for Institutions and Programs, 19587
  National Center for Education Statistics System Clearance for Cognitive, Pilot, and Field Test Studies, 19586–19587
  Native American Career and Technical Education Program Application, 19584–19585
Meetings:
  President's Board of Advisors on Historically Black Colleges and Universities, 19585–19586

Energy Department

See Federal Energy Regulatory Commission
NOTICES
Meetings:
  Environmental Management Site-Specific Advisory Board, Idaho National Laboratory, 19594
  Environmental Management Site-Specific Advisory Board, Northern New Mexico, 19594–19595
  Fuel Cycle Technologies, Office of Nuclear Energy, 19587–19588
  Fuel Cycle Technologies, Office of Nuclear EnergyMeetings, 19595
Surplus Plutonium Disposition, 19588–19594

Environmental Protection Agency

RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Arizona; Rescissions and Corrections, 19495
  San Joaquin Valley, CA; 1-Hour and 1997 8-Hour Ozone Nonattainment Area Requirements, 19492–19495
  Transportation Conformity Update, South Carolina, 19495–19498
OMB Approvals under the Paperwork Reduction Act; OMB Approvals under the Paperwork Reduction Act; Technical Amendment, 19490–19492
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  North Carolina; Regional Haze, 19519–19526
  Transportation Conformity Update, South Carolina, 19526–19527
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  OMB Responses, 19602–19603
  Motor Vehicle and Engine Compliance Program Fees (Renewal), 19604–19605
Meetings:
  Cancellation of a Public Teleconference of the Science Advisory Board's Economy-Wide Modeling Panel, 19601–19602
  Environmental Modeling, 19602

Proposed Administrative Settlements:
  Rab Valley Wood Preserving Superfund Site, Panama, LeFlore County, OK, 19603–19604
Proposed Consent Decree, Clean Air Act Citizen Suit, 19600–19601

Federal Aviation Administration
RULES
Airworthiness Directives:
  Airbus Airplanes, 19467–19470, 19482–19484
  The Boeing Company Airplanes, 19470–19482
Amendment of Class D and Class E Airspace:
  Wilmington, OH; Correction, 19484–19485
Amendment of Class E Airspace:
  Alpena, MI and Muskegon, MI; Correction, 19485–19486
  Rapid City, SD; Correction, 19486
PROPOSED RULES
Airworthiness Directives:
  Airbus Airplanes, 19505–19511
  International Aero Engines AG Turbofan Engines, 19516–19518
  The Boeing Company Airplanes, 19512–19516
Special Conditions:
  Ultramagic, S.A., Mark-32 Burner Series, 19502–19505
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19700
Meetings:
  RTCA Special Committee (224) Airport Security Access Control Systems, 19700–19701

Federal Emergency Management Agency
RULES
Final Flood Elevation Determinations, 19498–19499
NOTICES
Changes in Flood Hazard Determinations, 19612–19616
Major Disaster Declarations:
  Louisiana; Amendment No. 3, 19612
  Oregon; Amendment No. 2, 19612

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 19598–19600
Effectiveness of Exempt Wholesale Generator Status:
  FTS Project Owner 1, LLC, et al., 19599
Environmental Assessments; Availability, etc.:
  Dominion Transmission, Inc.; Leidy South Project, 19597–19598
Hydroelectric Applications:
  Public Utility District No. 2 of Grant County, 19596–19597
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
  Antelope Big Sky Ranch LLC, 19595–19596
Investigations; Determinations, Modifications, and Rulings, etc.:
  Midcontinent Independent System Operator, Inc., 19597
Petitions for Declaratory Orders:
  Percheron Power, LLC, 19599
Staff Attendance, 19598–19599

Federal Highway Administration
NOTICES
Buy America Waivers, 19701–19702

Federal Motor Carrier Safety Administration
NOTICES
Applications for Exemption; Commercial Driver's License Standards:
  Daimler Trucks North America (Daimler), 19702–19703
Commercial Driver's License; Applications for Exemtions:
  Oregon Department of Transportation, 19703–19705

Federal Railroad Administration
NOTICES
FY 2016 Railroad Safety Technology Grant Funds, 19705–19709

Federal Reserve System
NOTICES
Changes in Bank Control:
  Acquisitions of Shares of a Bank or Bank Holding Company, 19605
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 19605

Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19709–19712

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
  12-Month Findings on Petitions to List Island Marble Butterfly, San Bernardino Flying Squirrel, Spotless Crake, and Sprague's Pipit as Endangered or Threatened Species, 19527–19542
NOTICES
Low-Effect Habitat Conservation Plan:
  Terrace of Scotts Valley in the City of Scotts Valley, Santa Cruz County, CA, 19616–19618
Willamette Valley Native Prairie Habitat Programmatic Safe Harbor Agreement:
  Fender's Blue Butterfly in Benton, Lane, Linn, Marion, Polk, and Yamhill Counties, OR, 19618–19619

Food and Nutrition Service
PROPOSED RULES
Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program; Clarification and Extension of Comment Period, 19500–19502

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 19712–19713

Foreign-Trade Zones Board
NOTICES
Applications for Reorganization:
  Foreign-Trade Zone 17; Kansas City, KS, 19551–19552

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Contractors' Purchasing Systems Reviews, 19605–19606
  Right of First Refusal of Employment, 19606–19607

Health and Human Services Department
See Centers for Disease Control and Prevention
See National Institutes of Health

See Substance Abuse and Mental Health Services Administration

Homeland Security Department

See Coast Guard
See Federal Emergency Management Agency

Interior Department

See Fish and Wildlife Service
See National Park Service
See Ocean Energy Management Bureau
See Reclamation Bureau

Internal Revenue Service

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19713–19716

International Trade Administration

NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
  Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, 19552
  Phosphor Copper from the Republic of Korea, 19552–19557

International Trade Commission

NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
  Polyethylene Terephthalate Resin from Oman, 19638–19639

Justice Department

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Appeal from a Decision of an Immigration Judge, 19639–19640
  Immigration Practitioner Complaint Form, 19639

Labor Department

See Workers Compensation Programs Office

Legal Services Corporation

NOTICES
Proposed Revisions for the LSC Grant Assurances for Calendar Year 2017 Basic Field Grants, 19640–19641

National Aeronautics and Space Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Contractors' Purchasing Systems Reviews, 19605–19606
  Right of First Refusal of Employment, 19606–19607

National Institutes of Health

NOTICES
Meetings:
  National Heart, Lung, and Blood Institute, 19609
Requests for Nominations:
  National Institutes of Health, National, Heart, Lung, and Blood Institute's National Asthma Education and Prevention Program Coordinating Committee, 19610

National Labor Relations Board

RULES
Claims under the Federal Tort Claims Act, 19486–19488

National Oceanic and Atmospheric Administration

PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
  Shrimp Fishery of the Gulf of Mexico; Amendment 17A, 19547–19548
Marine Mammals:
  Sakhalin Bay–Nikolaya Bay–Amur River Stock of Beluga Whales; Designation as a Depleted Stock, 19542–19547
NOTICES
Exempted Fishing Permit; Applications, 19579–19581
Takes of Marine Mammals Incidental to Specified Activities:
  Taking Marine Mammals Incidental to Site Characterization Surveys off the Coast of Massachusetts, 19557–19579

National Park Service

NOTICES
Environmental Impact Statements; Availability, etc.:
  Adoption of a Long-Term Experimental and Management Plan for the Operation of Glen Canyon Dam, Page, AZ, 19638
Intent to Repatriate Cultural Items:
  Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE, and State Archaeological Research Center, Rapid City, SD, 19625–19626
  Grand Rapids Public Museum, Grand Rapids, MI, 19620–19621
  Illinois Historic Preservation Agency, Springfield, IL, 19624–19625
Inventory Completions:
  Army Corps of Engineers, Mobile District, Mobile, AL, 19628–19629
  Catalina Island Museum, Avalon, CA, 19633–19638
  Department of Anthropology and Middle Eastern Cultures, Mississippi State University, MS, 19621–19622
  Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE, and State Archaeological Research Center, Rapid City, SD, 19619–19620, 19627–19632
  Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS; Correction, 19632–19633
  Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace, St. Ignace, MI, 19622–19624

National Science Foundation

NOTICES
Meetings:
  Advisory Committee for Cyberinfrastructure, 19641

Nuclear Regulatory Commission

NOTICES
Applications and Amendments Involving Proposed No Significant Hazards Considerations, etc., 19641–19651
Petition; Director's Decision:
  Entergy Nuclear Operations, Inc., and Dominion Energy Kewaunee, Inc. Vermont Yankee Nuclear Power Station and Kewaunee Power Station, 19651

Ocean Energy Management Bureau

PROPOSED RULES

Air Quality Control, Reporting, and Compliance, 19718–19816

Postal Regulatory Commission

NOTICES

New Postal Products, 19651–19653

Postal Service

NOTICES

Product Changes:
  Priority Mail and Parcel Select Negotiated Service Agreement, 19653

Presidential Documents

PROCLAMATIONS

Special Observances:
  National Cancer Control Month (Proc. 9411), 19847–19850
  National Child Abuse Prevention Month (Proc. 9412), 19851–19852
  National Financial Capability Month (Proc. 9413), 19853–19854
  National Sexual Assault Awareness and Prevention Month (Proc. 9414), 19855–19856

Reclamation Bureau

NOTICES

Environmental Impact Statements; Availability, etc.:
  Adoption of a Long-Term Experimental and Management Plan for the Operation of Glen Canyon Dam, Page, AZ, 19638

Securities and Exchange Commission

NOTICES

Applications:
  FactorShares Trust, et al., 19681–19690
  OHA Investment Corporation, et al., 19656–19660
Meetings; Sunshine Act, 19660–19661
Orders Granting Limited Exemptions:
  J.P. Morgan Exchange-Traded Fund Trust, JPMorgan Diversified Return International Currency Hedged ETF, et al., 19695–19697
Self-Regulatory Organizations; Proposed Rule Changes:
  BATS Exchange, Inc., 19661–19664, 19690–19695
  Chicago Board Options Exchange, Inc., 19653–19656
  NASDAQ PHLX, LLC, 19664–19665
  Nasdaq Stock Market, LLC, 19678–19680
  New York Stock Exchange, LLC, 19671–19678
  NYSE MKT, LLC, 19665–19671

Small Business Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19698–19699
Disaster Declarations:
  Oklahoma, 19699
  Texas, 19698
SBA Model Form of Agreement of Limited Partnership for an SBIC Issuing Debentures, 19697–19698

State Department

NOTICES

Delegation of the Secretary of State's Authorities to the Assistant Secretary for Consular Affairs and the Assistant Secretary of Democracy, Human Rights, and Labor, 19699–19700
Designations as Global Terrorists:
  Salah Abdeslam, 19700

Substance Abuse and Mental Health Services Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19611–19612

Transportation Department

See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration

RULES

Organization and Delegation of Powers and Duties, 19818–19845

Treasury Department

See Foreign Assets Control Office
See Internal Revenue Service

Workers Compensation Programs Office

PROPOSED RULES

Claims for Compensation under the Energy Employees Occupational Illness Compensation Program Act, 19518–19519

Separate Parts In This Issue

Part II

Interior Department, Ocean Energy Management Bureau, 19718–19816

Part III

Transportation Department, 19818–19845

Part IV

Presidential Documents, 19847–19856

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

9411 19849
9412 19851
9413 19853
9414 19855

7 CFR

Proposed Rules:

271 19500
278 19500

12 CFR

1026 19467

14 CFR

39 (4 documents) 19467, 19470, 19472, 19482
71 (3 documents) 19484, 19485, 19486

Proposed Rules:

31 19502
39 (5 documents) 19505, 19509, 19512, 19514, 19516

20 CFR

Proposed Rules:

30 19518

29 CFR

100 19486

30 CFR

Proposed Rules:

550 19718

33 CFR

117 19488
165 19488

40 CFR

9 19490
52 (3 documents) 19492, 19495

Proposed Rules:

52 (2 documents) 19519, 19526

44 CFR

67 19498

49 CFR

1 19818

50 CFR

Proposed Rules:

17 19527
216 19542
622 19547

Rules and Regulations

Federal Register
Vol. 81, No. 65
Tuesday, April 5, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Submission of Credit Card Agreements Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of expiration of suspension.

SUMMARY: The Truth in Lending Act (TILA) and Regulation Z require credit card issuers to submit their currently-offered credit card agreements to the Bureau of Consumer Financial Protection (Bureau), to be posted on the Bureau's Web site. In April 2015, the Bureau suspended that submission obligation for a period of one year. That suspension has expired, and the next submission is due on the first business day on or after April 30, 2016 (*i.e.*, May 2, 2016). Credit card issuers should visit the Bureau's Web site for instructions on submitting credit card agreements.

DATES: Credit card issuers are required to submit to the Bureau the agreements they offered to the public as of March 31, 2016, on or before May 2, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas L. Devlin, Counsel, or Kristine M. Andreassen, Senior Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at 202–435–7700.

SUPPLEMENTARY INFORMATION: In April 2015, the Bureau amended Regulation Z (12 CFR part 1026), which implements TILA, and the official interpretation to that regulation, to temporarily suspend card issuers' obligations to submit credit card agreements to the Bureau for a period of one year *i.e.*, the four quarterly submissions due to the Bureau by the first business day on or after April 30, 2015; July 31, 2015; October 31, 2015; and January 31, 2016, respectively.[1]

The suspension began with the submission that would have been due on the first business day on or after April 30, 2015, and ended with the submission that would have been due on the first business day on or after January 31, 2016. Accordingly, card issuers must resume submitting agreements to the Bureau with the submission due on the first business day on or after April 30, 2016 (*i.e.*, May 2, 2016), covering credit card agreements that were offered to the public as of March 31, 2016.[2] Regulation Z § 1026.58(g) and comment 58(g)–2 describe which agreements must be submitted to the Bureau as part of the submission due on May 2, 2016.

Regulation Z provides that card issuers shall submit their currently-offered agreements "in the form and manner specified by the Bureau." [3] Updated submission instructions are available through the Bureau's Web site.[4] Card issuers' obligations to post currently-offered credit card agreements on their publicly available Web sites, and to make agreements for open accounts available to cardholders, were not affected by the suspension.[5]

Dated: March 28, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–07815 Filed 4–4–16; 8:45 am]

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[1] 80 FR 21153 (Apr. 17, 2015).

[2] 12 CFR 1026.58(g)(1).

[3] 12 CFR 1026.58(c)(1).

[4] *http://www.consumerfinance.gov/credit-cards/agreements/*.

[5] 12 CFR 1026.58(d), (e), (g)(2).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1047; Directorate Identifier 2014–NM–157–AD; Amendment 39–18449; AD 2016–07–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes. This AD was prompted by a report that, during the assembly process, several gaps between the two parts of the girt bar fittings for the aft passenger doors were found to exceed tolerances. This AD requires an inspection of the gap between the two parts of the girt bar fittings on left-hand (LH) and right-hand (RH) aft passenger doors, and corrective actions if necessary. We are issuing this AD to detect and correct incorrect gaps between the girt bar fittings. Detachment of a girt bar could lead to the separation of the slide or slide-raft from the fuselage, making the emergency exit inoperative, which could impede an emergency evacuation.

DATES: This AD becomes effective May 10, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 10, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1047.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1047; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on January 23, 2015 (80 FR 3533) ("the NPRM"). The NPRM was prompted by a report that, during the assembly process, several gaps between the two parts of the girt bar fittings for the aft passenger doors were found to exceed tolerances. The NPRM proposed to require an inspection of the gap between the two parts of the girt bar fittings on LH and RH aft passenger doors, and corrective actions if necessary. We are issuing this AD to detect and correct incorrect gaps between the girt bar fittings. Detachment of a girt bar could lead to the separation of the slide or slide-raft from the fuselage, making the emergency exit inoperative, which could impede an emergency evacuation.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Reference Later Revision of Service Information

United Airlines (UAL) proposed to update the reference to the service information to Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014. UAL also suggested that the service information update would also update the effectivity for the applicable inspection.

We agree to reference the latest service information, Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, which updates the effectivity, and have revised paragraph (g) of this AD accordingly. We have also added a new paragraph (i) to this AD to provide credit for actions done using Airbus Service Bulletin A320–53–1289, dated May 28, 2014, and have redesignated subsequent paragraphs accordingly.

Request To Clarify the Tolerances for the Gap Size

UAL requested clarification on the inspection task's initial gap requirement tolerance and the required gap tolerance for trimmed latches. UAL stated that it seems the initial inspection in Task 531289–832–601/602–001 of Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, specifies that a gap equal to or less than 4 millimeters (mm) (0.158 inch) is acceptable without the need for further action, but other tasks for post-trimming and post-latch-replacement inspections specify replacement if the gap is less than 1 mm (0.0394 inch). UAL noted that those inspection tasks reference a figure in Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, which specifies the gap should be between 1 mm (0.0394 inch) and 4 mm (0.158 inch). UAL also stated that the trimming action in Task 531289–831–601–001 of Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, specifies trimming the latch again if the gap is still greater than 4 mm (0.158 inch), which seems to conflict with a figure that gives one trim dimension without any tolerance. UAL further stated that it should be clearer that the latch should be trimmed as many times as required with a maximum trim dimension of 0.5 mm (0.0197 inch) until the required gap tolerance is achieved.

We agree to provide clarification. Figure A–SBCAA of Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, specifies 0.5 mm (0.0197 inch) as the limit of the edge margin, which must not be exceeded while trimming the latch part during the gap adjustment. We find that Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, is clear on the initial gap tolerance, which specifies corrective actions if the gap is initially greater than 4 mm (0.158 inch). The corrective actions include trimming and determining the gap after trimming. If the gap is less than 1 mm (0.0394 inch) or greater than 4 mm (0.158 inch) after trimming, Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, specifies additional corrective actions. No change has been made to this final rule in this regard.

Request To Address Issue of Obsolete Part Numbers

UAL stated that the NPRM and the referenced service information (Airbus Service Bulletins A320–53–1289, dated May 28, 2014, and Revision 01, dated August 29, 2014) do not identify part number D531125020000 as obsolete, which is identified in the illustrated parts catalog (IPC) as an acceptable part. UAL pointed out that the referenced service information introduces new part numbers D5348027920–200/400 as part of a corrective action, but does not specify the new part numbers as a part of an action to require new or revised latch or girt bar assembly parts. UAL asserts that, without a revised IPC or specific steps in the service information, there is a risk that the old part number could be used in the future, and lead to an incorrect gap after accomplishing the inspection required by this AD.

We agree to clarify the issue. This AD refers to Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, as the appropriate source of service information for accomplishing the actions required by this AD. We have determined the information specified in Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014, is adequate. In addition, the requirements of an AD take precedence over any specifications in an IPC, which is not an FAA-approved document. We recommend that operators work with the manufacturer to ensure there are no discrepancies in the IPC. It is the responsibility of operators to apply necessary controls to maintain the airplane in accordance with the required configuration of an AD. No change has been made to this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014. The service information describes procedures for a detailed inspection of the gap in the girt bar fittings of the aft passenger doors, LH and RH sides, and corrective actions.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 838 airplanes of U.S. registry.

We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $213,690, or $255 per product.

In addition, we estimate that any necessary follow-on actions will take about 4 work-hours and require parts costing $435, for a cost of $775 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–04 Airbus: Amendment 39–18449. Docket No. FAA–2014–1047; Directorate Identifier 2014–NM–157–AD.

(a) Effective Date

This AD becomes effective May 10, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(4) of this AD, except those on which Airbus Modification 154966 has been embodied during production.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that, during the assembly process, several gaps between the two parts of the girt bar fittings for the aft passenger doors were found to exceed tolerances. We are issuing this AD to detect and correct incorrect gaps between the girt bar fittings. Detachment of a girt bar could lead to the separation of the slide or slide-raft from the fuselage, making the emergency exit inoperative, which could impede an emergency evacuation.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Action

Except as provided by paragraph (h) of this AD, within 36 months after the effective date of this AD, do a detailed inspection of the gap in the girt bar fittings of the aft passenger doors, left-hand (LH) and right-hand (RH) sides, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014. Do all applicable corrective actions before further flight.

(h) Exception

For any airplane that has been modified to a configuration where one or both LH and RH aft passenger doors are permanently inoperative or deactivated: If any aft passenger door is reactivated, after reactivation but before further flight, do the detailed inspection of the reactivated aft passenger door(s) and all applicable corrective actions, as required by paragraph (g) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1289, dated May 28, 2014, which is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without

obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(3) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014–0178, dated July 25, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1047.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A320–53–1289, Revision 01, dated August 29, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 20, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07028 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5036; Directorate Identifier 2015–NM–180–AD; Amendment 39–18453; AD 2016–07–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for a certain The Boeing Company Model DC–9–83 (MD–83) airplane. This AD requires installing fuel level float and pressure switch in-line fuses, and doing applicable wiring changes, on the left, right, and center wing forward spars, forward auxiliary fuel tank, and aft auxiliary fuel tank. This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective April 20, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 20, 2016.

We must receive comments on this AD by May 20, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5036.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5036; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5262; fax: 562–627–5210; email: *samuel.lee@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 (66 FR 23086, May 7, 2001) requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Related Rulemaking

AD 2011–01–16, Amendment 39–16573 (76 FR 1993, January 12, 2011), requires installing fuel level float and pressure switch in-line fuses on the wing forward spars and forward and aft auxiliary fuel tanks. The applicability of AD 2011–01–16 did not include the Model DC–9–83 (MD–83) airplane identified in the applicability of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin MD80–28–226, Revision 1, dated March 6, 2015. The service information describes procedures for installing fuel level float and pressure switch in-line fuses, and doing wiring changes, on the left, right, and center wing forward spars, forward auxiliary fuel tank, and aft auxiliary fuel tank. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD would require accomplishing the actions specified in the service information described previously. For information on the procedures, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5036.

FAA's Justification and Determination of the Effective Date

The airplane identified in the paragraph (c) applicability of this AD is currently not registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if this airplane is placed on the U.S. Register in the future. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2016–5036, and Directorate Identifier 2015–NM–180–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

Currently, the sole airplane affected by this AD is not on the U.S. Register. However, if the affected airplane is imported and placed on the U.S. Register in the future, we estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	31 work-hours × $85 per hour = $2,635	$7,034	$9,669	$0

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–08 The Boeing Company: Amendment 39–18453; Docket No. FAA–2016–5036; Directorate Identifier 2015–NM–180–AD.

(a) Effective Date

This AD is effective April 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model DC–9–83 (MD–83) airplane, fuselage number 2155 (variable number 80E718, serial number 53192), certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 28: Fuel.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Fuse Installation

Within 60 months after the effective date of this AD, install fuel level float and pressure switch in-line fuses, and do applicable wiring changes, on the left, right, and center wing forward spars, forward auxiliary fuel tank, and aft auxiliary fuel tank. Do the actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD80–28–226, Revision 1, dated March 6, 2015.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin MD80–28–226, dated April 14, 2010, which is incorporated by reference in AD 2011–01–16, Amendment 39–16573 (76 FR 1993, January 12, 2011).

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Los Angeles ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5262; fax: 562–627–5210; email: *samuel.lee@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Service Bulletin MD80–28–226, Revision 1, dated March 6, 2015.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 22, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07230 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0187; Directorate Identifier 2011–NM–094–AD; Amendment 39–18452; AD 2016–07–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 757 airplanes. This AD was prompted by fuel system reviews conducted by the manufacturer. This AD requires modifying the fuel quantity indication system (FQIS) wiring to prevent development of an ignition source inside the center fuel tank. We are issuing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective May 10, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 10, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0187.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0187; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *jon.regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 757 airplanes. The SNPRM published in the **Federal Register** on February 23, 2015 (80 FR 9400) ("the SNPRM"). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on March 1, 2012 (77 FR 12506). The NPRM proposed to require modifying the fuel quantity indication system (FQIS) wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank. The NPRM was prompted by fuel system reviews conducted by the manufacturer. The SNPRM proposed to revise the applicability, including alternative actions for cargo airplanes, and extend the compliance time. We are issuing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Record of Ex Parte Communication

In preparation of AD actions such as NPRMs and immediately adopted rules, it is the practice of the FAA to obtain technical information and information on the operational and economic impact from design approval holders and aircraft operators. We discussed certain issues related to this final rule in a meeting held December 1, 2015, with Airlines for America (A4A) and other members of the aviation industry. This final rule addresses the issues discussed during that meeting that are relevant to this final rule. A summary of this meeting can be found in the rulemaking docket at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0187.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM and the FAA's response to each comment.

Request To Withdraw SNPRM: New Certification Requirements for Flammability Reduction Means (FRM) Unwarranted

A4A, representing U.S. cargo operators, stated that the FAA intends to issue rulemaking requiring U.S. cargo operators to do additional fuel safety modifications to meet the latest aircraft certification requirements.

We infer that A4A considers that requiring airplanes to meet the latest certification requirements is not warranted and that the SNPRM should therefore be withdrawn. We assume that by "the latest aircraft certification requirements," A4A is referring to the relatively new requirements for FRM contained in 14 CFR part 125.

We do not agree that the SNPRM should be withdrawn. This AD is not specifically intended to require that the affected airplanes meet the flammability requirements of 14 CFR part 125. It is instead intended to address an unsafe condition as required by 14 CFR part 39 identified by the FAA under the policy contained in the FAA's Special Federal Aviation Regulation No. 88 (14 CFR part 21, SFAR 88) AD decision policy (Policy Memorandum ANM–100–2003–112–15) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/DC94C3A46396950386256D5E006AED11?OpenDocument&Highlight=anm-100-2003-112-15*), dated February 25, 2003, and the FAA's Transport Airplane Risk Assessment Methodology (TARAM) (Policy Statement PS–ANM–25–05) (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/4E5AE8707164674A862579510061F96B?OpenDocument&Highlight=ps-anm-25-05*). The FAA determined that installing FRM that meets 14 CFR part 125 would be one acceptable way to address the identified unsafe condition, so airplanes on which such a modification was incorporated were excluded from the applicability of the SNPRM. Other modifications identified later in this discussion are available as alternative actions to installing FRM for certain operations. We have determined it is necessary to proceed with issuance of this final rule.

Request To Withdraw SNPRM: Intrusive, Expensive, Unnecessary

A4A stated that Airbus and Boeing have indicated to them that the service bulletins for the wire separation modification that is part of the cargo airplane alternative actions will be intrusive and expensive and will not significantly improve safety. A4A stated that the safety analyses performed by the aircraft manufacturers do not classify the proposed modifications as safety critical. A4A noted that those service bulletins will not be issued as "Alert" service bulletins. Additionally, A4A stated that foreign regulatory authorities, aircraft manufacturers, and airlines do not support that a safety issue remains.

We infer that A4A is requesting that we withdraw the SNPRM because the airplane manufacturers have determined that an unsafe condition does not exist and the SNPRM will not significantly improve safety. We do not agree that the SNPRM should be withdrawn. We acknowledge that Boeing does not consider the condition associated with FQIS on these airplanes to be unsafe. We disagree with Boeing's assertions, for the reasons discussed extensively in our response to Boeing's similar comment in the SNPRM, under "Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk." We have determined that it is necessary to proceed with issuance of this final rule.

Request To Withdraw SNPRM: Global Economic Disadvantage to U.S. Operators

A4A does not expect that foreign regulators will require modification of affected foreign-registered aircraft, and stated that the competitive position of U.S. cargo operators will be harmed as a result. A4A stated that foreign regulatory agencies did not mandate retrofit of FRM for cargo airplanes, and therefore A4A did not expect that those authorities will mandate FQIS changes for their operators. A4A's comment made reference to documents published by the European Aviation Safety Agency (EASA), the Civil Aviation Authority of China (CAAC), and the Japan Civil Aviation Bureau (JCAB) as evidence that those agencies are not planning action to address any unsafe condition associated with FQIS.

We infer that A4A is requesting that we withdraw the NPRM because other foreign regulatory agencies have determined that an unsafe condition does not exist with regard to FQIS as addressed by the proposed AD.

We were unable to examine the EASA document A4A attempted to reference because the reference number was incomplete. We do not agree that the CAAC and JCAB documents indicate a position on the unsafe condition addressed by the SNPRM. Both of those documents simply state a requirement for existing type certificate holders to review fuel tank designs that is similar to the FAA's SFAR 88. Those documents do not state positions on any unsafe conditions or AD proposals identified by the FAA, the CAAC, or the JCAB.

A4A stated that the U.S. air cargo industry is currently in an extremely competitive global market. Additional lower deck capacity on passenger aircraft, especially through Middle East hubs, has significantly increased the need for cargo industry capacity. Several cargo carriers have ceased operations, and many others have parked some aircraft. U.S. carriers compete directly with foreign cargo operators. A4A stated that any additional costs on U.S. cargo operators that are not incurred by foreign operators will make U.S. operators less competitive and will lead to the loss of jobs in the U.S.

We infer that A4A is requesting that we withdraw the proposal to require corrective action on cargo airplanes because non-U.S. cargo operators will not be required to make similar modifications, and the FAA AD action would harm the competitive position of U.S. cargo operators, resulting in the loss of U.S. jobs.

We do not agree to withdraw the SNPRM for corrective action on cargo airplanes. As part of the AD development process, the FAA works with the affected manufacturer to develop a cost estimate for the corrective actions in a proposed AD. The FAA considers all possible corrective actions proposed by a manufacturer in an attempt to minimize the cost burden on operators. In some cases the FAA even makes a specific suggestion to a manufacturer for a less costly alternative. In the end, the manufacturer is responsible for development of an appropriate corrective action.

While the FAA attempts to minimize the costs associated with a required corrective action for a U.S. product, ultimately the FAA has the responsibility as the civil aviation authority (CAA) of the state of design to address unsafe conditions through AD action. Other CAAs overseeing foreign operators will typically apply the FAA AD or develop a similar AD for U.S. products operated under each CAA's jurisdiction. Other CAAs rely heavily on the knowledge and judgment of the CAA of the state of design to identify unsafe conditions and appropriate corrective actions for products of that state. The FAA is not aware at this time of any affected CAAs that do not plan to issue a corresponding mandate to address the unsafe condition associated with FQIS identified in the proposed AD. Even if such a situation occurs, the FAA would not use a foreign CAA's position as a justification for not addressing an unsafe condition identified by the FAA. While we acknowledge such a situation could harm the competitive position of a U.S. operator, we are still obligated by U.S. law and by international treaties to address the identified unsafe condition. We have determined that it is necessary to proceed with issuance of this final rule.

Request To Withdraw SNPRM: Costs of Compliance

A4A stated that the proposed modifications are very costly, and noted that United Parcel Service (UPS) has estimated a total cost of $16 million for its fleet of four aircraft types that are potentially affected by the SNPRM and other similar planned ADs. A4A pointed out that U.S. cargo operators have already spent tens of millions of dollars on fuel tank safety improvements. UPS alone has spent $35.5 million to comply with 51 SFAR 88 ADs on the four fleet types potentially affected. A4A noted that cargo operators already have recurring expenses for Enhanced Airworthiness Program for Airplane Safety (EAPAS) maintenance program tasks that continue to help ensure fuel tank safety. A4A added that cargo operators have already invested in improved and more expensive fuel tank component repair and overhaul processes.

We infer that A4A is requesting that we withdraw the SNPRM because the costs of addressing previously identified fuel tank unsafe conditions has been high, and that the additional cost to address the FQIS latent-plus-one issue will also be high, with very little safety benefit.

We do not agree to withdraw the SNPRM. We acknowledge that the total industry cost to address other fuel tank system unsafe conditions has been high. The SFAR 88 studies for Boeing airplanes identified several basic design deficiencies in lightning protection that could cause an ignition source in a fuel tank in the event of a lightning strike, and several issues with fuel pump systems and fuel valve systems where a single failure could result in an ignition source in a fuel tank. Fuel pump issues are suspected to have caused several fuel tank ignition events, so these issues were considered to be the highest priority for the development of corrective actions and related AD actions. The FAA considers the cost of addressing those issues to be clearly justified. Deficiencies in maintenance programs and inappropriate component repair actions that could lead to inadvertent significant increases in the risk of an ignition source in a fuel tank were also identified, and the cost of airworthiness limitations to address those issues is also considered to be justified.

The SFAR 88 studies and the FAA's subsequent decision-making process identified FQIS vulnerability of Model 707, 727, 737, 747, 757, 767, and 777 airplanes as an unsafe condition requiring corrective action. While the more recently designed of these airplane models have significant improvements in FQIS design details, they all have similar FQIS design architecture with respect to the identified failure scenario. That architecture is vulnerable to a combination of a latent in-tank wiring failure and a subsequent wiring failure outside of the tank that connects a high power source to the FQIS tank circuit creating an ignition source in a fuel tank. This failure combination was determined by the National Transportation Safety Board (NTSB) to have been the most likely cause of the Model 747 fuel tank explosion accident off Long Island in 1996. NTSB Safety Recommendation A–98–038 (*http://www.ntsb.gov/about/employment/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=A-98-038*) recommended that the FAA require that FQIS wiring on all airplane models that have similar wiring installations be separated and shielded to the maximum extent possible.

The FAA issued AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998); and AD 99–03–04, Amendment 39–11018 (64 FR 4959, February 2, 1999); to address this issue on early Model 747 and Model 737 airplanes, respectively, which used the same FQIS as the accident airplane. The FAA subsequently (in 2003) determined that this same architectural vulnerability was an unsafe condition for high flammability fuel tanks on all Boeing jet transports existing at that time. This determination was consistent with the published FAA policy for SFAR 88 corrective actions and with the current FAA TARAM guidelines for identification of unsafe conditions on transport airplanes.

The FAA deferred acting on this unsafe condition until after the FRM rulemaking activity was complete because introduction of FRM had the potential to change the classification of many of the affected fuel tanks to low flammability. When the final decision for the FRM rule did not include a requirement for FRM on all airplanes, the FAA resumed the planned actions to address the identified FQIS unsafe condition on the airplanes that were not required to have FRM.

The FAA considers the safety benefit of the SNPRM to be significant for both passenger and cargo airplanes. We estimate that the installation of compliant FRM will provide approximately an order of magnitude reduction in the risk of a fuel tank explosion on anticipated flights with a latent failure of an FQIS circuit in the center fuel tank. We estimate that the periodic BITE checks in the cargo airplane alternative actions will result in a 75- to 90-percent reduction in the number of flights that operate with a latent in-tank failure that makes them vulnerable to a single additional wiring hot short failure creating an ignition source in the center fuel tank. We estimate that the proposed wire separation modification in the cargo airplane alternative actions will reduce the risk of a hot short (and a resultant ignition source) on flights that have a latent in-tank failure by 50 to 75 percent. This estimated reduction in the risk on anticipated flights with a latent in-tank failure is sufficient to reduce the risk below the FAA's TARAM individual flight risk guideline level for urgent action. As discussed below in our response to "Request to Remove Alternative Actions for Cargo Airplanes," we determined that further changes to further reduce the risk below the TARAM individual flight risk corrective action guideline of 1 in 10 million per flight hour would significantly increase the costs of compliance and are not necessary to adequately address the unsafe condition. We have determined that it is necessary to proceed with issuance of this final rule.

Request To Withdraw SNPRM: Unsafe Condition Addressed by Previous Requirements

A4A stated that there have been no fuel tank ignition incidents since the previously issued fuel tank safety ADs were implemented. A4A stated that this provides direct evidence that FAA projections for additional incidents were overstated and that SFAR 88 changes have worked. They further stated that no unsafe condition exists, asserting that service experience has shown that the fuel tank safety issues have been sufficiently addressed with significant previous modifications, recurring maintenance, controlled overhaul processes and repair processes, and maintenance program tasks.

We infer that A4A is requesting that we withdraw the SNPRM because previously required actions have adequately addressed the need for improvements in fuel tank safety.

We do not agree to withdraw the SNPRM. Until recently, fuel tank ignition incidents on U.S.- and European-manufactured transport airplanes have occurred roughly once every five to six years, with the most recent event in May 2006 (a Model 727 airplane in India in 2006, a Model 737 airplane in Thailand in 2001, a Model 747 airplane near New York in 1996, and a Model 737 airplane in the Philippines in 1991). It has now been ten years since the most recent event.

We agree that a significant improvement in fuel tank safety has occurred due to actions that have reduced the potential for ignition sources associated with single failures of fuel pumps and fuel pump power systems. That improvement alone would be expected to increase the average interval between fuel tank ignition incidents to more than ten years. However, the fact that no incidents have occurred since 2006 is not statistically significant, and is not sufficient to predict that additional events will not occur. In addition, even assuming the average interval between events is significantly improved to the extent that the overall fleet risk is considered acceptable, we would still address unsafe conditions identified based on the published FAA policy for SFAR 88 corrective actions and the current FAA guidelines for identification of unsafe conditions on transport airplanes when the individual flight safety risk exceeds our guidelines, as in this case. We have determined that it is necessary to proceed with issuance of this final rule.

Request To Withdraw SNPRM: All Related NTSB Safety Recommendations Closed

A4A stated that the NTSB previously issued the following safety recommendations related to flammability, wiring, and wiring maintenance:

- A–96–174—Preclude flammable fuel air mixtures in fuel tanks. Closed—Acceptable Action: FRM Rulemaking. Safety Recommendation A–96–174 can be found at *http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=A-96-174.*
- A–98–038—Separation of FQIS wires to the max extent possible. Closed—Acceptable Action: SFAR 88 Rulemaking.
- A–98–039—Require surge protection systems for FQIS wires. Closed—Acceptable Action: SFAR 88 Rulemaking. Safety Recommendation A–98–039 can be found at *http://www.ntsb.gov/about/employment/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=A-98-039.*
- A–00–106—Assess wiring criticality and separation. Closed—Acceptable Action: EAPAS/FTS Rulemaking. Safety Recommendation A–00–106 can be found at (*http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=A-00-106.*
- A–00–108—Repair of potentially unsafe wiring conditions. Closed—Acceptable Action: EAPAS/FTS Rulemaking. Safety Recommendation A–00–108 can be found at *http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=A-00-108.*

A4A noted that all applicable NTSB safety recommendations are closed with acceptable actions taken by the FAA. A4A stated that none of the NTSB safety recommendations called for the FAA to address wire separation for the FQIS.

We infer that A4A is requesting that we withdraw the SNPRM because the NTSB considers the overall fuel tank safety issue to be adequately addressed by previous actions.

We do not agree to withdraw the SNPRM. A4A appears to have misunderstood NTSB Safety Recommendation A–98–038 and the NTSB's acceptance of the FAA's response to that safety recommendation. NTSB Safety Recommendation A–98–038 specifically called for the FAA to require, in "airplanes with fuel quantity indication system (FQIS) wire installations that are co-routed with wires that may be powered, the physical separation and electrical shielding of FQIS wires to the maximum extent possible." The NTSB classified that recommendation as "closed, acceptable action" after the FAA stated that it would issue ADs to mandate FQIS protection on the high flammability tanks of aircraft on which the installation of FRM is not required by the Fuel Tank Flammability Reduction (FTFR) rule (73 FR 42444, July 21, 2008). The communications between the NTSB and the FAA on Safety Recommendation A–98–038 can be viewed at *http://www.ntsb.gov/about/employment/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=A-98-038.* We have determined that it is necessary to proceed with issuance of this final rule.

Request To Withdraw SNPRM: Unjustified by Risk Assessment

A4A stated that the original equipment manufacturers (OEMs) and other regulatory agencies are having difficulty calculating the true safety value associated with the proposed FQIS AD. A4A stated that its position is that all the unsafe conditions have been mitigated, operationally and across industry, and all previous rules have been effective. A4A added that, in light of the operators' financial and technical investment to mitigate the unsafe conditions in all areas, the SNPRM is difficult to understand technically relative to the amount of mitigation that would be required, in light of a true risk assessment. A4A stated that the FAA is alone in believing that a safety issue still exists.

We infer that A4A is requesting that we withdraw the SNPRM because it has not been justified by a risk assessment and because previously required actions have adequately addressed the need for improvements in fuel tank safety.

We do not agree to withdraw the SNPRM. We provided a detailed response to similar comments and described the FAA's risk assessment in the SNPRM in the sections "Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk," "Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Not Supported by Risk Analysis," and "Request to Withdraw NPRM (77 FR 12506, March 1, 2012): No Unsafe Condition," as well as in earlier paragraphs in this discussion. We have determined that it is necessary to proceed with issuance of this final rule.

Request To Remove Requirement for Corrective Actions for Cargo Airplanes

A4A stated that the alternative wire separation modifications allowed for cargo airplanes would not meet the "new design criteria." (We assume that A4A is referring to the wire separation requirements for repairs and modifications that are included in the fuel tank system airworthiness limitations required by recent ADs for the various Boeing models.) A4A stated that in the Model 757 service bulletin under development by Boeing, only about "5 percent" of FQIS wires can be separated from other systems by a distance of 2 inches, and that the majority of the wire bundle relocation will achieve only up to 0.5-inch spacing. A4A stated that because the wire separation requirements are not met, partial exemptions from the requirements of 14 CFR 25.981 are required to allow approval of these wire separation service bulletins. Based on the reduced separation distance and the need for exemptions, A4A considered the proposed wire separation requirements included in the cargo airplane alternative actions to be a symbolic gesture with no significant safety benefit, while at the same time being expensive and intrusive. A4A further stated that operators have reviewed the associated draft service bulletins and are concerned about the lack of a design target or adequate rationale for the actions proposed by the FAA. Finally, A4A stated that Boeing had stated to them that Boeing does not understand what design changes the FAA wants or why the FAA considers there to be a safety issue.

We infer that A4A is requesting that we remove the alternative actions for a wire separation modification on cargo airplanes because A4A believes the wire separation actions associated with the cargo airplane alternative actions in the SNPRM would have no significant safety benefit since inadequate physical wire separation is provided.

We do not agree to withdraw the SNPRM. A4A appears to have misunderstood the intent of the FQIS wire separation requirements added to the airworthiness limitations as a critical design configuration control limitation (CDCCL). The FQIS wire separation CDCCL provides a set of wire separation requirements that are intended to be used as a default when modifying or repairing an aircraft to ensure that the intended level of separation of the FQIS wiring from other wiring is maintained. The Model 757 CDCCL (28–AWL–05) contains a simple 2-inch separation requirement as originally proposed by Boeing. While Boeing has not proposed changes to the Model 757 FQIS wire separation CDCCL, the corresponding CDCCL (28–AWL–05) for Model 737–700, –800, and –900 airplanes has numerous additional provisions approving other design approaches (typically combinations of wire sleeving and smaller separation distances) that Boeing or operators proposed and that the FAA approved. Each time wire separation configuration options were approved for Boeing, alternative CDCCL wording was approved as an AMOC with the AD that required the addition of the CDCCLs to operators' maintenance programs. A similar AMOC will be granted for the approved modifications to the FQIS for Model 757 airplanes.

A4A also appears to have misunderstood the reason that exemptions would be required to allow approval of the cargo airplane wire separation modification. Lack of a full 2 inches of wire separation in all of the changed areas is not the reason an exemption is required. Rather, an exemption is required because the overall FQIS will not comply with 14 CFR 25.901(c) and 25.981(a)(3) due to the existing noncompliance of the unchanged areas of the system. Because those rules require a system-level safety analysis, we cannot find the changes to the system compliant if a noncompliance exists in the unchanged areas of the system.

The proposed Boeing design uses sleeving over the wire bundles and extensive retention features to provide a level of wire protection similar to the protection that would be provided by a greater separation distance. The design measures are consistent with those previously approved by the FAA in the Model 737–700/800/900 CDCCL mentioned previously.

We consider the safety benefit provided by the proposed cargo airplane alternative actions to be significant. The unsafe condition determination and the rationale and estimated safety benefit for the cargo airplane alternative actions were discussed extensively with Boeing in several meetings, and we consider that Boeing fully understands the FAA's position on each of those aspects of the proposal. The proposed requirement for a periodic check through the built-in test equipment (BITE) of the FQIS processor is intended to identify and result in corrective actions for the detectable fault conditions in the FQIS in-tank wiring. We estimated that this proposed requirement will result in a 75- to 90-percent reduction in the number of flights that operate with a latent in-tank failure that makes them vulnerable to a single additional wiring hot short failure creating an ignition source in the center fuel tank. The proposed FQIS wire separation modification is intended to reduce the risk of a hot short of power onto center tank FQIS circuits by physically isolating the portions of those circuits that are outside of the tank in the areas where those circuits are most vulnerable to damage and most easily separated. We did not propose to require modifications of the wiring in the electrical racks or in the cockpit areas because of the difficulty involved in accessing and achieving additional wire separation in those areas, and in recognition that the FQIS processor provides some beneficial circuit isolation to protect against hot shorts in those areas. We estimated that the proposed wire separation modification would reduce the risk of a hot short on flights that have a latent in-tank failure by 50 to 75 percent. Those estimates were reviewed with Boeing, and Boeing did not disagree with those estimates. We have determined it is necessary to proceed with issuance of this final rule.

Request To Remove Alternative Actions for Cargo Airplanes

Colin Edwards and an anonymous commenter made no explicit request to change the SNPRM, but objected to the proposed addition of alternative actions for cargo airplanes that would allow a design change that does not fully comply with the fuel tank system safety requirements of 14 CFR part 25 (14 CFR 25.981(a)(3)) to be used to address the unsafe condition. The commenters stated that it should not be acceptable to allow greater risk to exist on cargo airplanes than that allowed for passenger airplanes.

We infer that the commenters propose the elimination of the proposed alternative corrective action for cargo airplanes. We disagree with this request. We determined that an acceptable level of safety would be provided for the affected cargo airplanes, and explained our position in depth in response to similar comments in the SNPRM. However, we will attempt to address the commenters' concerns by expanding on the explanation of our safety determination.

When assessing potential unsafe conditions on transport airplanes to determine if corrective action is necessary, the FAA assesses the total risk to the affected fleet of airplanes exposed to the condition, and assesses the level of risk on individual airplanes within the fleet. The FAA's guidelines for assessing the total fleet risk related to the unsafe condition are slightly different for cargo and passenger airplanes due to operational usage differences. In this case, however, the total risk to the affected fleet is lower than the unsafe condition risk guidelines for both passenger and cargo airplanes. Total fleet risk is therefore not the risk assessment element driving the proposed actions.

When assessing the level of risk on individual airplanes, the FAA considers the risk on the worst reasonably anticipated flights to ensure that the level of safety on each flight is acceptable. Our individual flight risk unsafe condition threshold is 1 × 10E–7 events (or a 1-in-10-million chance of a catastrophic event) per flight hour. In addition, the worst reasonably anticipated flights should not be vulnerable to a single failure that causes a fatal event, regardless of probability. There is no difference in the individual flight risk unsafe condition criteria for cargo airplanes and passenger airplanes because the operational differences are not considered in this risk calculation.

In this case, we are concerned about a latent failure inside the fuel tank that, in combination with an electrical short circuit in FQIS wiring outside of the tank, could result in an electrical spark or arc in the tank. An electrical arc or spark in the fuel tank combined with flammable conditions in the fuel tank could result in a fuel tank explosion. The worst reasonably anticipated flights in this case are those that have both the latent failure and flammable conditions in the tank. The manufacturer's analysis indicates that a significant number of flights would be expected to occur with these conditions in the life of the affected fleet if no corrective action is taken. For those flights, one additional failure—a short circuit between FQIS wiring and power wiring—could cause a fuel tank explosion. Also, the probability of an explosion is between 1 in a million and 1 in 10 million, per flight hour, which slightly exceeds the numerical unsafe condition guideline for individual flight risk discussed above.

An issue that violates one or more of the individual flight risk guidelines would normally require corrective action that reduces the risk to a level that is below the unsafe condition guidelines. However, in this case the FAA acknowledged that the cost of corrective action is high, and that the available corrective action (fuel tank FRM systems) would reduce, but not eliminate, the number of expected flights with the condition we are concerned about (a latent failure plus flammable conditions inside the tank). The alternative actions for cargo airplanes would also reduce the number of expected flights with the condition we are concerned about, but to a lesser degree. The FAA has determined that allowing a moderate number of cargo flights per year (on average) with this condition provides an acceptable level of safety. As part of making this determination, we noted that the level of risk on the worst reasonably anticipated flights is similar to the level of risk for private and commercial pilots flying normal category airplanes.

We have not changed the final rule regarding this issue.

Request To Require FQIS Modification in all Fuel Tanks

National Air Traffic Controllers Association (NATCA) requested that we require changes to the FQIS to address the potential "latent-plus-one-failure scenario" in all fuel tanks, not just in the center fuel tank.

NATCA stated that the failure condition that is the subject of the SNPRM should be classified as a "known" latent-plus-one-failure condition when applying the FAA Transport Airplane Directorate Policy Memorandum 2003–112–15, "SFAR 88—Mandatory Action Decision Criteria," dated February 25, 2015 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/dc94c3a46396950386256d5e006aed11/$FILE/Feb2503.pdf*). NATCA stated that this would have the effect of classifying the failure condition as an unsafe condition requiring corrective action in all affected fuel tanks regardless of flammability level.

NATCA considered the combination of a latent in-tank failure with electrical energy transmitted into the fuel tank via the FQIS wiring due to an additional failure outside of the tank to be a "known" failure condition because that failure condition was considered to be the most likely cause of the TWA Flight 800 Model 747 accident. (That accident occurred on July 17, 1996, shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York.) NATCA concluded that because the Model 757 FQIS is similar to that of the Model 747, both models are vulnerable to the same failure scenario. NATCA cited the unsafe condition statement for the SNPRM as evidence that the scenario should be classified as "known." NATCA pointed out that the FAA issued AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998), to address this issue for Model

747 airplanes, and pointed out that the FAA TARAM Handbook specifically states that Policy Memorandum 2003–112–15 should be followed in determining whether corrective action should be required for fuel tank safety concerns identified through SFAR 88.

We disagree with the request to require modification of the FQIS in all fuel tanks. We have determined that, under the policy contained in the policy memorandum, this failure condition for the Model 757 FQIS should not be classified as "known." The memo defines "known" failure conditions as follows:

> [T]hose conditions which have occurred in-service and are likely to occur on other products of the same or similar type design, and conditions which have been subject to mandatory corrective actions, following in-service findings, on products with a similar design of fuel system.

We agree that the Model 757 FQIS has the same high-level system architecture and operating principles as those of the Model 747 FQIS, resulting in vulnerability to the same theoretical latent-plus-one-failure scenario. There are, however, significant differences in the details of the Model 757 FQIS design that reduce the likelihood of the individual contributing failures. Those differences include the following:

- Improved FQIS probe terminal connector block design;
- The use of wiring that is not silver plated and therefore does not create silver sulfide deposits on the terminal blocks;
- The use of improved wire types and wiring installation practices outside of the fuel tanks; and
- The use of a system processor that provides significant isolation of the tank probe circuits from the indication and power circuits of the FQIS.

We therefore did not consider that the FQIS designs for the Model 747 and Model 757 were so similar that the Model 757 FQIS design should be considered to have a "known" latent-plus-one-failure condition vulnerability as defined in the policy memorandum. The provisions in the above definition for classifying a failure condition as "known" based on the existence of a similar design were intended to allow the FAA to evaluate the degree of similarity in the design, and to make discretionary judgments in determining that a failure condition that is believed to have occurred (and/or was addressed by AD action) in one specific design should be classified as "known" in a different specific design. The application of that discretion would be expected to involve evaluation of design detail differences and the effects of those differences on failure modes and failure probability. Based on our determination that sufficient design differences exist between the Model 757 and Model 747 FQIS designs to not classify the Model 757 FQIS latent-plus-one-failure condition as "known," under the direction contained in the policy memorandum, this AD addresses that failure condition vulnerability only for the center fuel tank, which is the only high-flammability fuel tank on the Model 757.

NATCA expressed a concern that the FAA did not understand NATCA's previous comment on this matter, and stated that the FAA had not considered the requirements of "Element 2.a)" from Policy Memorandum 2003–112–15, dated February 25, 2015. In fact, we had addressed the requirements of "Element 2.a)" in the response to the comments under "Request to Revise Proposed AD Requirements to Apply to All Fuel Tanks" of the SNPRM. The FAA understood the earlier comment and understands the more recent comment, but has reached a different conclusion about the classification of the failure condition under the guidance in the policy memorandum. We classified the Model 757 FQIS latent-plus-one-failure scenario as a theoretical vulnerability rather than a "known" combination of failures. Policy Memorandum 2003–112–15, dated February 25, 2015, calls for corrective action for theoretical latent-plus-one-failure conditions only in high-flammability fuel tanks. Contrary to the assertion in the NATCA comment, the acknowledgement of the scenario as theoretically possible and the consequent AD proposal to address the scenario in the high flammability center fuel tank do not automatically drive classification of the failure as "known" under the policy memorandum. We have not changed this final rule regarding this issue.

Request To Address Unsafe Condition in All Fuel Tanks, With or Without FRM

NATCA requested that we require design changes to the FQIS to address the potential latent-plus-one-failure scenario in all fuel tanks of all Model 757 airplanes, regardless whether FRM is installed. NATCA stated that the minimum performance standards for FRM contained in 14 CFR part 25 allow flights to occur with flammable conditions in tanks that are required to incorporate FRM due to system performance as designed and due to system failures. In addition, time-limited dispatch with an inoperative FRM has been allowed in the master minimum equipment list (MMEL) for affected airplanes. Flights with flammable conditions and a pre-existing latent in-tank FQIS failure are reasonably anticipated to occur in the life of the affected fleet. For those flights, a fuel tank explosion could occur due to a single additional failure (hot short of power onto FQIS tank probe circuits). NATCA notes that four fuel tank explosion events have occurred in fuel tanks that are classified as low flammability.

We disagree with the request. We have determined that the proposed corrective actions (either installation of FRM or specific FQIS changes limited to the center fuel tank) represent a reasonable, cost-effective method to achieve a meaningful reduction in the risk of an accident due to potential FQIS fuel tank ignition sources.

The service history of conventional unheated aluminum wing tanks that contain Jet A fuel indicates that there would be little safety benefit by further limiting the flammability of these tanks. While NATCA expressed concern because fuel vapor ignition events have occurred in wing fuel tanks, NATCA did not differentiate service experience based on fuel type used (JP–4 versus Jet A fuel).

Our review of the nine wing tank ignition events we know to have occurred on turbine-engine-powered transport airplanes shows that five of the nine airplanes were using JP–4 fuel, and this type of fuel is no longer used except on an emergency basis in the U.S. Use of JP–4 fuel in other parts of the world is also relatively rare, and is normally limited to areas with extremely cold airport conditions. Three of the remaining four events were caused by external heating of the wing by engine fires, and the remaining event occurred on the ground during maintenance. To date, there have been no fuel tank explosions in conventional unheated aluminum wing tanks fueled with Jet A fuel that have resulted in any fatalities.

The flammability characteristics of JP–4 fuel results in the fuel tanks being flammable a significant portion of the time when an airplane is in flight. This is not the case for wing tanks containing Jet A fuel. Therefore, based on the low fleet average flammability of the Model 757 wing fuel tanks and on the specific features of the Model 757 FQIS design, we have determined that the latent-plus-one vulnerability that exists in the Model 757 wing tank FQIS is not an unsafe condition requiring corrective action on in-service airplanes.

We have not changed this final rule regarding this issue.

Request To Require Design Changes for Full Compliance with Airworthiness Regulations

NATCA requested that we require design changes to the FQIS that would bring that system into full compliance with the applicable airworthiness regulations. NATCA stated that the failure condition that is the subject of the SNPRM represents a noncompliance of the type design with the requirements of 14 CFR 25.901(c) and 25.981(a)(3), even for low-flammability fuel tanks. NATCA stated that the proposed corrective actions would not bring the airplane design into compliance with those regulations "as required by SFAR 88 and SFAR 88 Policy published by the FAA as Mandatory Corrective Action criteria in FAA Policy Statement No. 2003–112–15." NATCA added that the proposed alternative corrective actions for cargo airplanes do not comply with those regulations because the alternative actions do not fully eliminate the potential for the failure condition that is addressed by the SNPRM.

We disagree with the request. SFAR 88, as modified by Amendment 21–82, and Policy Memorandum 2003–112–15, dated February 25, 2003, do not specifically require noncompliant designs discovered through SFAR 88 to be brought into compliance. As originally issued, SFAR 88 required design approval holders to develop the corrective actions necessary to bring any noncompliant design fuel system features into compliance. However, SFAR 88 did not dictate that the FAA require a given corrective action. In fact, the FAA later published Amendment 21–82, "Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88)," to clarify that the FAA would accept SFAR 88 reports that do not provide corrective actions that directly comply with 14 CFR 25.981(a)(3) provided any aspects that do not comply are compensated for by factors that provide an equivalent level of safety. The FAA used the introduction of flammability reduction in place of corrective action for a specific ignition source as an example of a potentially acceptable compensating factor.

Also, while the normal certification process requires proposed design changes to be compliant with the applicable regulations, applicants are permitted under 14 CFR part 11 to petition for an exemption from any FAA regulatory requirement. Policy Memorandum 2003–112–15, dated February 25, 2003, did not state that the FAA would not consider a petition for exemption from an airworthiness requirement for a proposed design intended as corrective action for an SFAR 88 issue. We therefore consider that the applicant may petition for an exemption and propose a noncompliant design change, and the FAA may approve and issue an AD to require a noncompliant design change. Boeing's FRM design change for the Model 757 was approved some time ago. We have determined that for Model 757 airplanes, installation of FRM, instead of FQIS design changes, represents a reasonable, cost-effective method to achieve a meaningful overall reduction in the risk of an accident due to fuel tank ignition events. We therefore excluded airplanes with FRM installed from the applicability of this AD.

Request To Mandate Compliance with Airworthiness Regulations for Newly Produced Airplanes

NATCA requested that we require newly produced airplanes to be in compliance with 14 CFR 25.901, 25.981(a), and 25.981(b). NATCA expressed concern that nearly 20 years after the TWA Flight 800 accident, manufacturers have been allowed to continue production of airplanes without making changes to eliminate the FQIS latent-plus-one-failure scenario, and that the FAA has granted exemptions to approve certain design changes without fully addressing the issue.

We disagree with the request. This AD applies only to certain Model 757 series airplanes, and the Model 757 is out of production. The comment is therefore outside of the scope of this AD. We have not changed the final rule regarding this issue.

Request To Allow Alternative Procedure for BITE Check

FedEx proposed that we revise paragraph (h)(1) of the SNPRM to allow use of the FQIS BITE check procedure in its airplane maintenance manual (AMM) as an alternative to the procedure in Boeing Service Bulletin 757–28–0136, dated June 5, 2014, which does not apply to FedEx's fleet. We assume this is because FedEx operates some airplanes that were converted to a cargo configuration using a non-Boeing supplemental type certificate.

We disagree with the request. FedEx's comment did not provide adequate information to show that its AMM procedure is equivalent to the procedure described in Boeing Service Bulletin 757–28–0136, dated June 5, 2014. FedEx's comment also did not identify the fault conditions for which dispatch would be prohibited. We therefore do not have sufficient information at this time to allow FedEx's proposed alternative procedure. However, under the provisions of paragraph (i) of this AD, we will consider requests for approval of alternative procedures, if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed this final rule regarding this request.

Request To Reduce Compliance Time

NATCA requested that we reduce the compliance time to 5 years or less. NATCA noted that the proposed 72-month compliance time would result in a corrective action deadline that is approximately 27 years after the TWA Flight 800 accident. NATCA stated that such a long delay in action is not in the public interest.

We disagree with the request to reduce the compliance time, which we have determined is necessary to give operators adequate time to prepare for and perform the required modifications without excessive disruption of operations. We had initially proposed 60 months, but extended that to 72 months in response to operator comments, which included extension requests of up to 108 months. NATCA made a similar comment to the NPRM (77 FR 12506, March 1, 2012), requesting a reduction in the compliance time to 36 months, and the FAA provided its response in the SNPRM under "Request to Reduce Compliance Time." We have not changed this final rule regarding this issue.

Statement Regarding Compliance Time for Wire Separation

FedEx stated that without service information for the wire separation, it cannot effectively determine whether the proposed 72-month compliance time is acceptable.

We had previously determined, as specified in the SNPRM, that the work involved for the cargo airplane wire separation modification would take 230 work-hours, and a compliance time of 72 months would be adequate for operators to perform the modification on their affected fleets. Boeing has since provided an updated estimate of 74 work-hours for the alternative modification for cargo airplanes. We have revised the cost estimate accordingly in this final rule, but since this change reduces the work-hour estimate, it is not necessary to adjust the compliance time to accommodate the workload for this action for cargo operators.

Request To Remove Reference to "Fuel Tank Systems"

Paragraph (g) of the SNPRM would have required modification of "the FQIS wiring or fuel tank systems." Boeing asked that we remove reference to "fuel tank systems" in this proposed requirement because a fuel tank system modification could be done as an AMOC.

We agree with the commenter's request and rationale. We have removed the references to "fuel tank systems" throughout the preamble and in paragraph (g) of this AD.

Request To Clarify Condition Requiring Repair

Boeing requested that we revise paragraph (h)(1) of the SNPRM to specify that repair is required for any "nondispatchable" fault code recorded before or as a result of the BITE check. (The SNPRM would have required repair for any fault code.) Boeing requested this change to make the repair requirement consistent with the BITE check service information referenced in the SNPRM (Boeing Service Bulletin 757–28–0136, dated June 5, 2014).

We agree with the request. The intent of the SNPRM was to require correction only of faults identified as "nondispatchable." The SNPRM used the terminology "as applicable" to indicate this intent, but we agree that further clarification is appropriate. We have revised paragraph (h)(1) in this AD as requested by the commenter.

Request To Clarify End Point for FQIS Wire Separation

Paragraph (h)(2) of the SNPRM specified that the FQIS wiring separation was to be done on the wiring that runs between the FQIS processor and the center fuel tank. Boeing requested that we change "the center fuel tank" to "the center fuel tank wall penetrations." Boeing requested this change to clarify the end point for the FQIS wire separation.

We agree with the request. Boeing's suggestion is consistent with the intent of this AD, and improves the clarity of the requirement. We have revised paragraph (h)(2) in this AD to incorporate Boeing's request.

Request To Delay Final Rule Pending New Service Information

Boeing requested that we delay issuance of the final rule pending issuance of new service information that would specifically define an acceptable wiring configuration that complies with the proposed requirements.

We disagree with the request because the referenced service information was not available at the time we were ready to publish the final rule, and we cannot reliably predict the time that service information will be issued by Boeing. We do not consider it in the public interest to further delay this rulemaking. We have determined that it is necessary to proceed with issuing the final rule as proposed. Operators may, however, request approval under the provisions of paragraph (i) of this AD to use a future approved service bulletin, if developed, as an AMOC with the requirements of this AD, or we may approve the service bulletin as a global AMOC.

Statement Regarding Unsafe Condition

Boeing stated that it has accepted the FAA's requirement to provide service information defining an acceptable wire separation modification, but, based on previously provided analysis, maintained that the risk level is less than extremely improbable. As asserted in earlier comments, Boeing considers the design of the affected airplanes safe and the proposed requirements therefore unnecessary.

We disagree with Boeing's assertions for the reasons discussed extensively in our response to Boeing's similar comment in the SNPRM. The FAA's response to Boeing's assertion is covered in the response to comments in the SNPRM under "Request to Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk."

Additional Change Made to This AD

We have revised the introductory text to paragraph (h) of this AD to clarify that the alternative modification for cargo airplanes must be accompanied by periodic BITE checks started within 6 months after the effective date of this AD. And, for airplanes converted to an all-cargo configuration more than 6 months after the effective date of this AD, operators must perform the first BITE check before flight after the conversion. In reviewing the proposed requirements after publication of the SNPRM, we recognized that operators might interpret the requirements as allowing a delay in the decision to exercise the cargo airplane alternative until late in the compliance period. That is not the literal meaning of the proposed language of the requirement, and was not the FAA's intent. However, we determined that we should clarify the language of paragraph (h) of this AD regarding the required timing for the first BITE check if an operator chooses to exercise the cargo airplane alternative.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We have reviewed Boeing Service Bulletin 757–28–0136, dated June 5, 2014, which describes procedures for a BITE check (check of built-in test equipment). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 167 airplanes of U.S. registry. This estimate includes 148 cargo airplanes and 19 non-air-carrier passenger airplanes. We estimate the following costs to comply with this AD:

ESTIMATED COSTS: BASIC REQUIREMENT FOR ALL AIRPLANES

Action	Labor cost	Parts cost	Cost per product
Fully correct FQIS vulnerability to latent-plus-one-failure conditions.	1,200 work-hours × $85 per hour = $102,000	$200,000	$302,000

ESTIMATED COSTS: BASIC REQUIREMENT FOR ALL AIRPLANES—Continued

Action	Labor cost	Parts cost	Cost per product
Estimated Costs: Alternative Actions for All Airplanes			
Install FRM	720 work-hours × $85 per hour = $61,200	323,000	$384,200.
Estimated Costs: Alternative Actions for Cargo Airplanes			
Wire separation	74 work-hours × $85 per hour = $6,290	10,000	$16,290.
FQIS BITE check (required with wire separation alternative actions).	1 work-hour × $85 per hour = $85	0	$85 per check (4 checks per year).

Existing regulations already require that air-carrier passenger airplanes be equipped with FRM by December 26, 2017. We therefore assume that the FRM installation specified in paragraph (g) of this AD will be done on only the 19 affected non-air-carrier passenger airplanes, for an estimated passenger fleet cost of $7,299,800. We also assume that the operators of the 148 affected cargo airplanes would choose the less costly actions specified in paragraph (h) of this AD, at an estimated cost of $2,410,920 for the wire separation modification, plus $50,320 annually for the BITE checks.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–07 The Boeing Company: Amendment 39–18452; Docket No. FAA–2012–0187; Directorate Identifier 2011–NM–094–AD.

(a) Effective Date

This AD is effective May 10, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes; certificated in any category; except airplanes equipped with a flammability reduction means (FRM) approved by the FAA as compliant with the Fuel Tank Flammability Reduction (FTFR) rule (73 FR 42444, July 21, 2008) requirements of 14 CFR 25.981(b) or 14 CFR 26.33(c)(1).

(d) Subject

Joint Aircraft System Component (JASC) Code 7397: Engine fuel system wiring.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Modification

Within 72 months after the effective date of this AD, modify the fuel quantity indication system (FQIS) wiring to prevent development of an ignition source inside the center fuel tank, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Alternative Actions for Cargo Airplanes

For airplanes used exclusively for cargo operations: As an alternative to the requirements of paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD, using methods approved in accordance with the procedures specified in paragraph (i) of this AD. To exercise this alternative, operators must perform the first inspection required under paragraph (h)(1) of this AD within 6 months after the effective date of this AD. To exercise this alternative for airplanes returned to service after conversion of the airplane from a passenger configuration to an all-cargo configuration more than 6 months after the effective date of this AD, operators must perform the first inspection required under paragraph (h)(1) of this AD prior to further flight after the conversion.

(1) Within 6 months after the effective date of this AD, record the existing fault codes stored in the FQIS processor and then do a BITE check (check of built-in test equipment) of the FQIS, in accordance with the

Accomplishment Instructions of Boeing Service Bulletin 757–28–0136, dated June 5, 2014. If any nondispatchable fault code is recorded prior to the BITE check or as a result of the BITE check, before further flight, do all applicable repairs, and repeat the BITE check until a successful test is performed with no nondispatchable fault found, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–28–0136, dated June 5, 2014. Repeat these actions thereafter at intervals not to exceed 750 flight hours.

(2) Within 72 months after the effective date of this AD, modify the airplane by separating FQIS wiring that runs between the FQIS processor and the center fuel tank wall penetrations, including any circuits that pass through a main fuel tank, from other airplane wiring that is not intrinsically safe.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *jon.regimbal@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Service Bulletin 757–28–0136, dated June 5, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07150 Filed 4–4–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6537; Directorate Identifier 2014–NM–154–AD; Amendment 39–18457; AD 2016–07–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes. This AD was prompted by reports of cracking of the aft fixed fairing (AFF) of the pylons due to fatigue damage of the structure. This AD requires repetitive inspections for damage and cracking of the AFF of the pylons, and repair if necessary. We are issuing this AD to detect and correct damage and cracking of the AFF of the pylons, which could result in detachment of a pylon and consequent reduced structural integrity of the airplane.

DATES: This AD becomes effective May 10, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 10, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6537.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6537; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on November 30, 2015 (80 FR 74729) (“the NPRM”).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0154, dated July 2, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> On aeroplanes equipped with post-mod 33844 CFM pylons, several operators have reported cracks on the Aft Fixed Fairing (AFF). After material analysis, it appears that

> the pylon AFF structure, especially on this configuration, is subject to fatigue constraint damage which could lead to pylon AFF cracks.
>
> Further to these findings, Airbus released Alert Operators Transmission (AOT) A54N002–12 which provides instructions to inspect the pylon AFF, applicable only to aeroplanes incorporating Airbus production mod 33844 on CFM pylons. More recently, Airbus issued Service Bulletin (SB) A320–54–1027, superseding AOT A54N002–12.
>
> This condition, if not detected and corrected, could lead to detachment of a pylon AFF from the aeroplane, possibly resulting in injuries to persons on the ground.
>
> For the reasons described above, this [EASA] AD requires repetitive detailed inspections (DET) of the pylon AFF and, depending on findings, accomplishment of applicable corrective action(s).

Since the MCAI was issued, EASA has clarified that the detachment of a pylon AFF from the airplane could result in damage to the airplane; such damage could result in reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6537.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Change to the Proposed Applicability

We have removed Airbus Model A320–215 airplanes from the Applicability statement of this AD; this model is not type certificated in the U.S.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD with the change described previously, including minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–54–1027, dated April 10, 2014. This service information describes procedures for inspections for damage and cracking of the AFF of the pylons, and repair if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 69 airplanes of U.S. registry.

We also estimate that it takes about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $23,460, or $340 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–12 Airbus: Amendment 39–18457. Docket No. FAA–2015–6537; Directorate Identifier 2014–NM–154–AD.

(a) Effective Date

This AD becomes effective May 10, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–111 and –112, airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes; certificated in any category; all manufacturer serial numbers on which Airbus Modification 33844 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by reports of cracking of the aft fixed fairing (AFF) of the pylons due to fatigue damage of the structure. We are issuing this AD to detect and correct damage and cracking of the AFF of the pylons, which could result in detachment of a pylon and consequent reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

At the later of times specified in paragraphs (g)(1) and (g)(2), or (g)(1) and (g)(3) of this AD, as applicable: Do a detailed inspection for damage and cracking of the AFF of the pylons, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–54–1027, dated April 10, 2014. Repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles or 3,750 flight hours, whichever occurs first.

(1) For all airplanes: Before exceeding 5,000 flight cycles or 7,500 flight hours, whichever occurs first since the airplane's first flight.

(2) For airplanes on which the inspection specified in Airbus All Operators Transmission (AOT) A54N002–12 has been done as of the effective date of this AD: Within 2,500 flight cycles or 3,750 flight hours since the most recent accomplishment of maintenance planning data (MPD) Task ZL 371–01, or since doing the most recent inspection specified in Airbus AOT A54N002–12, whichever occurs first.

(3) For airplanes on which the inspection specified in Airbus AOT A54N002–12 has not been done as of the effective date of this AD: Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

(h) Repair

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–54–1027, dated April 10, 2014. Accomplishment of this repair does not terminate the repetitive inspections required by paragraph (g) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0154, dated July 2, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6537.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A320–54–1027, dated April 10, 2014.

(ii) Reserved.

(3) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 22, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07372 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7486; Airspace Docket No. 15–AGL–26]

Amendment of Class D and Class E Airspace; Wilmington, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This correction amends the final rule published in the **Federal Register** of February 8, 2016, amending the Class E surface area airspace and Class E airspace designated as an extension at Wilmington Air Park, Wilmington, OH. This correction adds part-time Notice to Airmen (NOTAM) language inadvertently removed to the Class E surface area description. The geographic coordinates and airport name of Wilmington Air Park in Class D and E airspace, and in Class E airspace extending upward from 700 feet above the surface are added to the rule. The Title is also amended to include Class D airspace.

DATES: Effective 0901 UTC, April 5, 2016. The compliance date for this rule is March 31, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

History

The **Federal Register** published a final rule amending Class E airspace at Wilmington Air Park, Wilmington, OH, (81 FR 6450, February 8, 2016) Docket No. FAA–2015–7486. Subsequent to publication, the FAA found in amending the airport name and airport reference point for the airport, additional existing controlled airspace was inadvertently omitted from the rule. This action adds adjustment of the geographic coordinates in Class D airspace and Class E airspace extending upward from 700 feet or more above the surface of the Earth at Wilmington Air Park.

The FAA also determined that the part-time NOTAM language in the Class E surface area description was inadvertently removed in error. Potential safety concerns were identified due to the possibility for confusion in determining the operating rules and equipment requirements in the Wilmington Air Park terminal area. The concerns were based on the opportunity for part-time Class D surface area airspace and continuous Class E surface area airspace to be active at the same time.

To resolve these concerns, the FAA is keeping the part-time NOTAM language in the Class E surface area description to retain it as part-time airspace supplementing the existing part-time Class D surface area airspace at Wilmington Air Park. The regulatory text is rewritten for clarity.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of February 8, 2016 (81 FR 6450) FR Doc. 2016–02284, Amendment of Class E Airspace, Wilmington, OH, is corrected as follows:

§ 71.1 [Amended]

On page 6451, column 1, after line 31, add the following:

Paragraph 5000 Class D Airspace.

* * * * *

AGL OH D Wilmington, OH [Corrected]

Wilmington, Wilmington Air Park, OH
Lat. 39°25′41″ N., long. 083°47′32″ W.)
Wilmington, Hollister Field Airport, OH
Lat. 39°26′15″ N., long. 083°42′30″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of the Wilmington Air Park, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/facility directory.

* * * * *

AGL OH E2 Wilmington, OH [Corrected]

On page 6451, column 1, beginning on line 40, remove the following text:

"Within a 4.2-mile radius of Wilmington Air Park, and within 3.7 miles each side of the Midwest VOR/DME 215° radial extending from the 4.2-mile radius of Wilmington Air Park to 7 miles southwest of the airport, and within 3.7 miles each side of the Midwest VOR/DME 041° radial extending from the 4.2-mile radius of the airport to 7 miles northeast of the airport, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport."

And add in its place:

"Within a 4.2-mile radius of Wilmington Air Park, and within 3.7 miles each side of the Midwest VOR/DME 215° radial extending from the 4.2-mile radius of Wilmington Air Park to 7 miles southwest of the airport, and within 3.7 miles each side of the Midwest VOR/DME 041° radial extending from the 4.2-mile radius of the airport to 7 miles northeast of the airport, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/facility Director."

On page 6451, column 2, after line 11, add the following:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL OH E5 Wilmington, OH [Corrected]

Wilmington, Wilmington Air Park, OH
Lat. 39°25′41″ N., long. 083°47′32″ W.)
Midwest VOR/DME
Lat. 39°25′47″ N., long. 083°48′04″ W.)

That airspace extending upward from 700 feet above the surface within an 7-mile radius of Wilmington Air Park and within 4.6 miles each side of the Midwest VOR/DME 041° radial, extending from the 7-mile radius to 11.3 miles northeast of Wilmington Air Park.

Issued in Fort Worth, Texas, on March 28, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–07714 Filed 3–31–16; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7483; Airspace Docket No. 15–AGL–23]

Amendment of Class E Airspace for the Following Michigan Towns; Alpena, MI; and Muskegon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This correction amends a final rule published in the **Federal Register** of February 8, 2016 amending Class E surface area airspace and Class E airspace designated as an extension at Alpena County Regional Airport, Alpena, MI, and Muskegon County Airport, Muskegon, MI. This correction adds part-time Notice to Airmen (NOTAM) language to the Class E surface area description for the above airports.

DATES: Effective 0901 UTC, April 5, 2016. The compliance date for this rule is March 31, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

History

The **Federal Register** published a final rule amending Class E airspace at Alpena County Regional Airport, Alpena, MI, and Muskegon County Airport, Muskegon, MI (81 FR 6447, February 8, 2016) Docket No. FAA–2015–7483. Subsequent to publication, the FAA determined that the part-time NOTAM language in the Class E surface area description was inadvertently removed in error. Potential safety concerns were identified due to the possibility for confusion in determining the operating rules and equipment requirements in the Alpena Country Regional Airport and Muskegon Country Airport terminal areas. The concerns were based on the opportunity for part-time Class D surface area airspace and continuous Class E surface area airspace to be active at the same time.

To resolve these concerns, the FAA is keeping the part-time NOTAM language in the Class E surface area description to retain it as part-time airspace supplementing the existing part-time Class D surface area airspace at Alpena Country Regional Airport and Muskegon Country Airport. The regulatory text is rewritten for clarity.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of February 8, 2016 (81 FR 6447) FR Doc. 2016–02285, Amendment of Class E Airspace for the Following Michigan Towns; Alpena, MI, and Muskegon, MI, is corrected as follows:

§ 71.1 [Amended]

AGL MI E2 Alpena, MI [Corrected]

On page 6448, column 2, beginning on line 32, remove the following text:

"Within a 4.4-mile radius of the Alpena County Regional Airport, and within 2.5 miles each side of the Alpena VORTAC 350° radial, extending from the 4.4-mile radius of the airport to 7 miles north of the VORTAC, and within 2.5 miles each side of the Alpena VORTAC 187° radial, extending from the 4.4-mile radius of the airport to 7 miles south of the VORTAC."

And add in its place:

"Within a 4.4-mile radius of the Alpena County Regional Airport, and within 2.5 miles each side of the Alpena VORTAC 350° radial, extending from the 4.4-mile radius of the airport to 7 miles north of the VORTAC, and within 2.5 miles each side of the Alpena VORTAC 187° radial, extending from the 4.4-mile radius of the airport to 7 miles south of the VORTAC. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.”

AGL MI E2 Muskegon, MI [Corrected]

On page 6448, column 2, beginning on line 44, remove the following text:

“Within a 4.2-mile radius of the Muskegon County Airport and within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 4.2-mile radius of Muskegon County Airport.”

And add in its place:

“Within a 4.2-mile radius of the Muskegon County Airport and within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 4.2-mile radius of the Muskegon County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.”

Issued in Fort Worth, Texas, on March 28, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–07717 Filed 3–31–16; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7492; Airspace Docket No. 15–AGL–27]

Amendment of Class E Airspace; Rapid City, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This correction amends the final rule published in the **Federal Register** of February 4, 2016 amending Class E airspace area at Rapid City Regional Airport, Rapid City, SD. This correction adds part-time Notice to Airmen (NOTAM) language to the Class E surface area description for the airport.

DATES: Effective 0901 UTC, April 5, 2016. The compliance date for this rule is March 31, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

History

The **Federal Register** published a final rule amending Class E airspace at Rapid City Regional Airport, Rapid City, SD, (81 FR 5905, February 4, 2016) Docket No. FAA–2015–7492. Subsequent to publication, the FAA determined that the part-time NOTAM language in the Class E surface area description was inadvertently removed in error. Potential safety concerns were identified due to the possibility for confusion in determining the operating rules and equipment requirements in the Rapid City Regional Airport terminal area. The concerns were based on the opportunity for part-time Class D surface area airspace and continuous Class E surface area airspace to be active at the same time.

To resolve these concerns, the FAA is keeping the part-time NOTAM language in the Class E surface area description to retain it as part-time airspace supplementing the existing part-time Class D surface area airspace at Rapid City Regional Airport. The regulatory text is rewritten for clarity.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of February 4, 2016 (81 FR 5905) FR Doc. 2016–02037, Amendment of Class E Airspace; Rapid City, SD, is corrected as follows:

§ 71.1 [Amended]

On page 5906, column 1, beginning on line 27, remove the following text:

“Within a 4.4-mile radius of the Rapid City Regional Airport, excluding the portion north of a line between the intersection of the Rapid City Regional Airport 4.4-mile radius and the Ellsworth AFB 4.7-mile radius, and that airspace extending upward from the surface within 2.6 miles each side of the Rapid City VORTAC 155°/335°. radials extending from the 4.4-mile radius of the Rapid City Regional Airport to 7 miles southeast of the VORTAC, excluding that airspace within the Rapid City, SD, Class D airspace area.”

And add in its place:

“Within a 4.4-mile radius of the Rapid City Regional Airport, excluding the portion north of a line between the intersection of the Rapid City Regional Airport 4.4-mile radius and the Ellsworth AFB 4.7-mile radius, and that airspace extending upward from the surface within 2.6 miles each side of the Rapid City VORTAC 155°/335°. radials extending from the 4.4-mile radius of the Rapid City Regional Airport to 7 miles southeast of the VORTAC, excluding that airspace within the Rapid City, SD, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.”

Issued in Fort Worth, Texas, on March 28, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–07715 Filed 3–31–16; 4:15 pm]

BILLING CODE 4910–13–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 100

Claims Under the Federal Tort Claims Act

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) is issuing a final rule amending its Rules and Regulations concerning administrative claims made pursuant to the Federal Tort Claims Act (FTCA). The rule reflects structural changes within the NLRB that impact the NLRB's processing of claims, the current address for submission of claims to the NLRB, the impact of a claimant's submission of an amended claim, and the effect on a claimant of the NLRB's payment of a claim.

DATES: The effective date is June 6, 2016.

FOR FURTHER INFORMATION CONTACT: Gary Shinners, Executive Secretary, 1015 Half Street SE., Washington, DC 20570. Telephone: (202) 273–1067.

SUPPLEMENTARY INFORMATION: These amendments update the NLRB's regulations governing the submission and processing of administrative claims under the FTCA. Because of the scope of these amendments, the NLRB is replacing subpart D in its entirety.

The amendments include: (i) In paragraph (b), directing claims to be made to the Associate General Counsel for the Division of Legal Counsel, and directing that claims be submitted to the NLRB's current headquarters address available on its Web site; (ii) in paragraph (c), providing that a claim may be amended at any time prior to final action by the NLRB and that the NLRB shall have six months from the amendment to make a final disposition; (iii) in paragraph (d), providing that the Associate General Counsel for the Division of Legal Counsel has authority to determine submitted claims; (iv) in paragraph (e), omitting that legal review of certain claims is to be performed by the General Counsel or his or her designee; (v) in paragraph (f), providing that awards up to $2,500 will be paid by the Chief Financial Officer; and (vi) in paragraph (g), providing that acceptance of payment constitutes a release of claims against the United States, the NLRB, and any employee whose act or omission gave rise to the claim.

These amendments are being made primarily as a result of the NLRB's restructuring in 2013 to create a new Division of Legal Counsel (78 FR 44981 (July 25, 2013)). Claims previously were directed to and determined by the NLRB's Director of Administration, and as a matter of practice, claims filed in the regions were forwarded to headquarters for processing by Administration. As a result of the 2013 reorganization of NLRB functions, the Division of Legal Counsel now handles claims under the FTCA, including determining the claims, and the final rule reflects this change in paragraphs (b) and (d). Paragraph (b) also reflects that claims should be submitted to the NLRB's current headquarters address, available on its Web site; the address designated in the current regulations is outdated.

Similarly, financial functions, including payment of FTCA awards, were formerly conducted within the Division of Administration. In 2012, an Office of the Chief Financial Officer was created, with the Chief Financial Officer (CFO) jointly reporting to the General Counsel and the Chairman of the Board (77 FR 43127 (July 23, 2012)). Accordingly, the final rule reflects in paragraph (f) that payments on FTCA administrative claims under $2,500 are made by the CFO, rather than by the Division of Administration. Payments over that amount continue to be handled in accordance with 28 CFR 14.10.

Paragraph (c) is a new provision for the amendment of claims. It permits amendment at any time prior to the NLRB's determination of a claim, and it provides that an amendment restarts the six-month deadline for responding to the claim. It also provides that the six-month time period prior to which a claimant may not bring a lawsuit against an agency (28 U.S.C. 2675(a)) begins to run at the time of the amendment. While the NLRB has received amendments of claims, its regulations have not previously provided for their treatment.

The elimination of review by "the General Counsel or designee" for claims above $5,000 in paragraph (e) conforms the proposal with 28 CFR 14.5, which applies to FTCA administrative claims government-wide. That regulation provides that awards in excess of $5,000 may be made by the head of an agency or his designee "only after review by a legal officer of the agency." Accordingly, this regulation does not require legal review specifically by the General Counsel or a designee. Consistent with the NLRB restructuring, the Division of Legal Counsel will provide the legal review.

Finally, paragraph (g) sets forth that acceptance of payment constitutes a release of claims against the United States, the NLRB, and any employee whose act or omission gave rise to the claim. This is consistent with 28 U.S.C. 2672 and is included as a new provision to make the consequences of accepting payment clear to any claimants submitting claims to the NLRB.

Accordingly, consistent with the foregoing, the NLRB is amending 29 CFR part 100, subpart D to revise its procedures governing the submission and processing of administrative claims under the FTCA.

This action relates solely to agency organization, management, or personnel matters and will not impose any additional paperwork, reporting, or other costs, burdens, or responsibilities on claimants under the FTCA. Accordingly, this action is not subject to the advance notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553) or the requirements of Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801).

List of Subjects in 29 CFR Part 100

Administrative regulations, Claims under the Federal Tort Claims Act, Cooperation in audits and investigations, Employee personal property loss claims, Employee responsibilities and conduct, Government employees, Nondiscrimination on the basis of handicap in NLRB programs.

For the reasons set forth above, the NLRB amends 29 CFR part 100, subpart D as follows:

PART 100—ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for part 100 continues to read in part as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 141, 156).

* * * * *

Subpart D—Claims Under the Federal Tort Claims Act

■ 2. Revise § 100.401 to read as follows:

§ 100.401 Claims under the Federal Tort Claims Act for loss of or damage to property or for personal injury or death.

(a) *Scope of regulations.* These regulations apply to administrative claims filed under the Federal Tort Claims Act (28 U.S.C. 2672), as amended, for money damages against the United States for damage to or loss of property, or for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the National Labor Relations Board acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The regulations in this part supplement the Department of Justice's regulations in 28 CFR part 14.

(b) *Filing a claim.* Claims may be submitted to the Associate General Counsel, Division of Legal Counsel, Headquarters, National Labor Relations Board, Washington, DC 20570 at any time within 2 years after such claim has accrued. The current address for Headquarters can be found at *www.nlrb.gov.* Such claim may be presented by a person specified in 28 CFR 14.3. An executed Standard Form 95, *Claim for Damage, Injury, or Death,* or written notification must be submitted and accompanied by as much of the appropriate information specified in 28 CFR 14.4 as may reasonably be obtained.

(c) *Amendment of claim.* A claim submitted in compliance with this subpart may be amended by the claimant at any time prior to final action by the National Labor Relations Board or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the National Labor Relations Board shall have six months to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after filing of an amendment.

(d) *Action on claims.* The Associate General Counsel, Division of Legal Counsel, shall have the power to consider, ascertain, adjust, determine, compromise, or settle any claim submitted in accordance with paragraph (a) of this section. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR part 1.

(e) *Legal review of claims.* In accordance with 28 CFR 14.5, legal review is required if the amount of a proposed settlement, compromise, or award exceeds $5,000. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR part 14.

(f) *Payment of awards.* Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to this action will be paid by the Chief Financial Officer out of appropriations available to the National Labor Relations Board. Payment of any award, compromise, or settlement in an amount greater than $2,500 will be paid in accordance with 28 CFR 14.10.

(g) *Acceptance of payment constitutes release.* Acceptance by a claimant, his or her agent or legal representative of any award, compromise, or settlement made pursuant to this part shall be final and conclusive on the claimant, his or her agent or legal representative and any other person on whose behalf or for whose benefit the claim has been submitted, and shall constitute a complete release of any claims against the United States, the National Labor Relations Board, and any employee of the government whose act or omission gave rise to the claim.

Dated: March 30, 2016.

By direction of the Board.

William B. Cowen,

Solicitor, National Labor Relations Board.

[FR Doc. 2016–07692 Filed 4–4–16; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0040]

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a deviation from the operating schedule that governs the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bascule bridge across the Inner Harbor Navigation Canal, mile 4.6, at New Orleans, Louisiana. This deviation is necessary to accommodate the rescheduling of the New Orleans Endurance Festival event. This deviation allows the bridge to remain closed to navigation during the event.

DATES: This deviation is effective from 7 a.m. through 2 p.m. on May 28, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0040] is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Geri Robinson, Bridge Administration Branch, Coast Guard, telephone (504) 671–2128, email *geri.a.robinson@uscg.mil.*

SUPPLEMENTARY INFORMATION: On February 1, 2016, a United States Coast Guard notice of temporary deviation from drawbridge regulations under the same docket number, USCG–2016–0040, was published in the **Federal Register** [81 FR 5039]. That temporary deviation resulted from a request made by Premier Event Management, through the Louisiana Department of Transportation and Development (LDOTD), for a deviation from the operating schedule of the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bascule bridge across the Inner Harbor Navigation Canal, mile 4.6, at New Orleans, Louisiana. The deviation was requested to accommodate the New Orleans Endurance Festival event, which includes a triathlon, originally scheduled to be held on April 3, 2016. Due to colder than normal weather, the New Orleans Endurance Festival was postponed until May 28, 2016. Therefore, through this document, the Coast Guard issues a temporary deviation for the rescheduled date.

The vertical clearance of the bascule span bridge is 46 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. The bridge is governed by 33 CFR 117.458(c).

This deviation is effective on May 28, 2016, from 7 a.m. through 2 p.m. This deviation allows the bridge to remain closed to navigation for seven (7) hours on the day of the event.

Navigation on the waterway consists of small tugs with and without tows, commercial vessels, and recreational craft, including sailboats.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergencies, and there is no immediate alternate route. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 30, 2016.

Eric Washburn,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2016–07702 Filed 4–4–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0263]

RIN 1625–AA00

Safety Zone; Bayou Teche, Crude Oil Spill; Jeanerette, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on all navigable waters of Bayou Teche from Jeanerette, LA to Linwood, LA. This safety zone is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with an 11,550 gallon type III crude oil spill and corresponding response efforts. During the periods of enforcement, entry into and transiting or anchoring within this safety zone is prohibited unless specifically authorized by Captain of the Port (COTP) Morgan City or other designated representative.

DATES: This rule is effective without actual notice from April 5, 2016 until April 15, 2016. The rule will be enforced until April 15, 2016, or until emergency spill response efforts are complete, whichever occurs earlier. For the purposes of enforcement, actual notice will be used from March 29, 2016 until April 5, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0263 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Vanessa Taylor, Chief of Waterways

Management, U.S. Coast Guard MSU Morgan City 800 David Dr, Morgan City LA,70380; telephone (985) 380–5334, email *Vanessa.R.Taylor@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate emergency efforts are required to respond to an oil spill on Bayou Teche. This spill poses an extremely hazardous condition to the public and environment until it is contained and cleaned up. It is impracticable to publish an NPRM because we must establish this safety zone by March 29, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to provide additional safety measures during the spill cleanup to ensure safety of the public and environment.

III. Legal Authority and Need for Rule

The legal basis and authorities for this rule are found in 33 U.S.C. 1231.

The purpose of the rule is to establish the necessary temporary safety zone to protect persons, property, and infrastructure from potential damage and safety hazards during emergency response efforts associated with an 11,550 gallon crude oil spill on Bayou Teche.

IV. Discussion of the Rule

This rule establishes a safety zone from March 29, 2016 through April 15, 2016 or until emergency spill response efforts are complete, whichever occurs earlier. The safety zone will cover all navigable waters of Bayou Teche from Jeanerette, LA to Linwood, LA. This safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the pollution response and cleanup occur. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under executive order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and traffic during the time-of-year of the safety zone. The safety zone only impacts a small designated area of Bayou Teche Waterway from Jeanerette, LA to Linwood, LA from March 29, 2016 through April 15, 2016 or until emergency spill response efforts are complete, whichever occurs earlier. Additionally, this is a time of year when vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 informing waterway users of the safety zone and any changes in the schedule. Finally, the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under executive order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in executive order 13132.

Also, this rule does not have tribal implications under executive order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 20 days that will prohibit entry in all navigable waters of the Bayou Teche from Jeanerette, LA to Linwood, LA. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–1121 to read as follows:

§ 165.T08–1121 Safety Zone; Bayou Teche, Crude Oil Spill; Jeanerette, LA.

(a) *Location.* The following area is a safety zone: All waters of Bayou Teche from Jeanerette, LA to Linwood, LA.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officers operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Morgan City in the enforcement of the safety zones.

(c) *Regulations.* (1) Under the general safety zone regulations in 33 CFR part 165 subpart C, you may not enter the safety zones described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16, or through Coast Guard Marine Safety Unit Morgan City at 985–380–5334. Those in the safety zones must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This rule will be enforced from March 29, 2016 through April 15, 2016 or until emergency spill response efforts are complete, whichever occurs earlier.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcasts notice to mariners of the enforcement period for the emergency safety zones as well as any changes in the dates and times of enforcement.

Dated: March 29, 2016.

D.G. McClellan,

Captain, U.S. Coast Guard, Captain of the Port Morgan City, Louisiana.

[FR Doc. 2016–07541 Filed 4–4–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[EPA–HQ–OPPT–2014–0486; FRL–9943–62]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment updates the table that lists the Office of Management and Budget (OMB) control numbers issued under PRA for information collection requirements contained in EPA's regulations that are promulgated in title 40 of the Code of Federal Regulations (CFR). This technical amendment adds new approvals published in the **Federal Register** since January 8, 2016, and removes expired and terminated approvals.

DATES: This final rule is effective April 5, 2016.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0486, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, Regulatory Coordination Staff (7101M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0258; email address: *hofmann.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about OMB approval for information collections required by EPA regulations. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

II. Background

A. Why is this technical amendment being issued?

This document updates the OMB control numbers listed in 40 CFR part 9 for various regulations promulgated under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136), and the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 408). Under PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are codified in title 40 of the CFR, after appearing in the preamble of the final rule. These numbers are listed in 40 CFR part 9, displayed in a subsequent publication in the **Federal Register**, or displayed by other appropriate means, such as on a related collection instrument or form, or as part of the instructions to respondents. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. In addition to displaying the applicable OMB control number in the final rule and on the applicable collection instruments, the Office of Chemical Safety and Pollution Prevention (OCSPP) has also typically listed the OMB control number in the table at 40 CFR 9.1 for regulations it has issued under TSCA, FIFRA, and FFDCA. With this technical amendment, OCSPP is updating the table in 40 CFR 9.1 to list the new OMB control number that replaces the two OMB control numbers that have been consolidated under the new OMB control number.

B. Why is this technical amendment issued as a final rule?

The information collection activities referenced in this document were previously subject to public notice and comment as part of the rulemaking process, and this action does not in any way affect the referenced information collection activities or rulemakings. This action only amends the table at 40 CFR 9.1 to update the list of OMB control numbers listed there. Due to the technical nature of the table, EPA finds that further notice and comment about amending the table is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)), to amend this table without further notice and comment.

C. What specific changes are being made?

On January 8, 2016, OMB approved the consolidation of three existing, approved OMB control numbers into a single, new OMB control number. Specifically, OMB control numbers 2070–0155, 2070–0158, and 2070–0181 were consolidated into a single information collection approved under OMB control number 2070–0195. This consolidated OMB control number covers the information collection activities imposed on entities conducting lead-based paint related activities. The previous OMB control numbers for these information collection activities will be discontinued.

III. Statutory and Executive Order Reviews

This action implements technical amendments to 40 CFR part 9 to reflect changes to OMB approvals under PRA. It does not otherwise impose or amend any requirements. As such, this action does not require review by OMB under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). Nor does it impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal Government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian tribes. As such, it will not have any "federalism implications" as described by Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) or "tribal implications" as described by Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note), environmental justice-related issues that would require consideration under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), or otherwise involve anything that would have any adverse effect on the supply, distribution, or use of energy that would require consideration under Executive Order 13211, entitled "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

In addition, since this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

IV. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 29, 2016.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, the table is amended by revising the undesignated center heading "Lead-Based Paint Poisioning Prevention in Certain Residential Structures" to read "Lead-Based Paint Poisoning Prevention in Certain Residential Structures" and revising the following entries underneath it:

■ a. Part 745, subpart E;
■ b. Part 745, subpart L; and
■ c. Part 745, subpart Q.

The revisions read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * *	* *
Lead-Based Paint Poisoning Prevention in Certain Residential Structures	
Part 745, subpart E	2070–0195
* * *	* *
Part 745, subpart L	2070–0195
Part 745, subpart Q	2070–0195
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[FR Doc. 2016–07797 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0048; FRL–9943–78–Region 9]

Clean Air Plans; 1-Hour and 1997 8-Hour Ozone Nonattainment Area Requirements; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state implementation plan revision submitted by the State of California to provide for attainment of the 1-hour ozone national ambient air quality standard in the San Joaquin Valley, California ozone nonattainment area and to meet other Clean Air Act requirements. Specifically, with respect to the 1-hour ozone standard, the EPA is taking final action to find the emissions inventories to be acceptable and to approve the reasonably available control measures demonstration, the rate of progress demonstrations, the attainment demonstration, contingency measures for failure to meet rate of progress milestones, the provisions for advanced technology/clean fuels for boilers, and the demonstration that the plan provides sufficient transportation control strategies and measures to offset emissions increases due to increases in motor vehicle activity. For the 1997 8-hour ozone standard, the EPA is taking final action to approve the demonstration that the plan provides sufficient transportation control strategies and measures to offset emissions increases due to increases in motor vehicle activity.

DATES: This rule is effective on May 5, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R09–OAR–2015–0048. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* confidential business information or "CBI"). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region 9, (415) 972–3963, *ungvarsky.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

Table of Contents

I. Proposed Action
II. Public Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On January 15, 2016 (81 FR 2140), the EPA proposed, under section 110(k)(3) of the Clean Air Act (CAA or "Act"), to approve a revision to the California state implementation plan (SIP) submitted by the California Air Resources Board (CARB) on December 20, 2013. The SIP submittal consists of the San Joaquin Valley's "2013 Plan for the Revoked 1-Hour Ozone Standard" ("2013 Ozone Plan") and related documentation.[1] More specifically, we proposed to approve all of the elements contained in the 2013 Ozone Plan, with the exception of the attainment contingency provisions for which the EPA is deferring action, based on the documentation contained in or submitted with the plan itself and supplemental documentation provided by CARB on June 19, 2014 related to the vehicle-miles-traveled (VMT) emissions offset requirement in CAA section 182(d)(1)(A).

As explained in more detail in our proposed rule, the 2013 Ozone Plan was prepared by the San Joaquin Valley Unified Air Pollution Control District (SJVUACPD or "District") and CARB in response to the EPA's regulatory responses to two specific court decisions issued by the Ninth Circuit Court of Appeals ("Ninth Circuit"),[2] one of which remanded to the EPA the approval of the previous San Joaquin Valley 1-hour ozone plan. Although the 1-hour ozone national ambient air quality standard has been revoked, certain SIP requirements that had applied to 1-hour ozone nonattainment areas, such as the San Joaquin Valley, at the time of revocation continue to apply under "anti-backsliding" regulations that the EPA promulgated to govern the transition from the 1-hour ozone standard to the 8-hour ozone standard.

In our proposed rule, we also discussed the implications on our action on the 2013 Ozone Plan of a third Ninth Circuit decision, *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015)("*Committee for a Better Arvin*"), and indicated that, in response to the decision in *Committee for a Better Arvin,* the EPA had proposed in a separate rulemaking (*i.e.,* 80 FR 69915 (November 12, 2015)) to approve (as a revision to the California SIP) a number of CARB mobile source regulations for which the EPA has issued waivers or authorizations under CAA section 209 (referred to herein as "waiver measures.") See our January 15, 2016 proposed rule at 81 FR 2141–2144.

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[1] Ground-level ozone is formed when oxides of nitrogen (NO$_X$) and volatile organic compounds (VOC) react in the presence of sunlight. The 1-hour ozone national ambient air quality standard is 0.12 parts per million (ppm) averaged over a 1-hour period ("1-hour ozone standard"). See 40 CFR 50.9.

[2] The two cases are *Sierra Club* v. *EPA,* 671 F.3d 955 (9th Cir. 2012)(Remand of the EPA's approval of previous San Joaquin Valley 1-hour ozone plan)("*Sierra Club*"); and *Association of Irritated Residents* v. *EPA,* 632 F.3d. 584, at 596–597 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (Remand of the EPA's approval of the state's VMT emissions offset demonstration for the South Coast)("*Association of Irritated Residents*").

In our January 15, 2016 proposed rule, we reviewed the various SIP elements contained in the 2013 Ozone Plan (except for the attainment contingency provisions), and evaluated them for compliance with statutory and regulatory requirements, and concluded that they meet all applicable requirements. More specifically, we determined that:

- The 2007 base year emission inventory in the 2013 Ozone Plan is comprehensive, accurate, and current and that this inventory as well as the 2013, 2016, and 2017 projected inventories have been prepared consistent with EPA guidance and provide an appropriate basis for the various other elements of the 2013 Ozone Plan, including the reasonably available control measures (RACM) demonstration, and the Rate-of-Progress (ROP) and attainment demonstrations (see 81 FR 2144–2145 from the proposed rule);
- There are no additional RACM that would advance attainment of the 1-hour ozone standard in the San Joaquin Valley to 2016, and thus the 2013 Ozone Plan provides for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1105(a)(1) and 51.1100(o)(17) for the 1-hour ozone standard (see 81 FR 2145–2148 from the proposed rule);
- The ROP demonstrations in the 2013 Ozone Plan meet the requirements of CAA section 172(c)(2) and 182(c)(2)(B), and 40 CFR 51.1105(a)(1) and 51.1100(o)(4) for the 1-hour ozone standard (see 81 FR 2148–2149 from the proposed rule);
- The air quality modeling in the 2013 Ozone Plan is adequate to support the attainment demonstration and that the plan's demonstration of attainment by November 26, 2017 meets the requirements of CAA section 182(c)(2)(A), and 40 CFR 51.1105(a)(1) and 51.1100(o)(12) for the 1-hour ozone standard (see 81 FR 2149–2153 from the proposed rule);
- The 2013 Ozone Plan provides sufficient excess reductions of NO_X in each milestone year beyond those needed to meet the next ROP percent reduction requirement to provide the 3 percent of adjusted baseline emissions reductions needed to meet the ROP contingency measure requirement for 2010, 2013, 2016, and 2017 and thereby meets the ROP contingency measure requirements in CAA section 182(c)(9) and 40 CFR 51.1105(a)(1) and 51.1100(o)(13) for the 1-hour ozone standard (see 81 FR 2153–2154 from the proposed rule);
- Through EPA-approved District rules 2201, 4306, and 4352, the 2013 Ozone Plan meets the clean fuels or advanced control technology for boilers requirement in CAA section 182(e)(3) and 40 CFR 40 CFR 51.1105(a)(1) and 51.1100(o)(6) for the 1-hour ozone standard (see 81 FR 2154 from the proposed rule); and
- The 2013 Ozone Plan (particularly, appendix D and the related technical supplement submitted by CARB on June 19, 2014) demonstrates that the State has adopted sufficient transportation control strategies (TCSs) and transportation control measures (TCMs) to offset the growth in emissions from growth in VMT and vehicle trips in the San Joaquin Valley for the purposes of the 1-hour ozone and 1997 8-hour ozone standards and thereby complies with the VMT emissions offset requirement in CAA section 182(d)(1)(A) and 40 CFR 51.1105(a)(1) and 51.1100(o)(10) for those standards (see 81 FR 2154–2158 from the proposed rule).

Lastly, we indicated in our proposed rule that, given that the 2013 Ozone Plan is based in part on the permanence and enforceability of the waiver measures, the EPA would not finalize approval of the 2013 Ozone Plan until the Agency takes final action to approve the waiver measures as part of the California SIP. The comment period for our proposed approval of the waiver measures SIP revision has closed, but the Agency has yet to issue a final rule. However, given that the statutory deadline for final action by the EPA on CARB's December 20, 2013 submittal of the 2013 Ozone Plan has passed and given that we expect that the EPA will take final action on the waiver measures SIP revision in the near term, we believe that taking action on the 2013 Ozone Plan at this time is reasonable and appropriate. If, however, final action on the waiver measures SIP revision is delayed beyond the near term, we will take appropriate remedial action to ensure that our action on the 2013 Ozone Plan is fully supportable or we will reconsider this action in light of changed circumstances.

Please see our January 15, 2016 proposed rule and the related Technical Support Document for more information concerning the background for this action and for a more detailed discussion of the rationale for approval of the 2013 Ozone Plan.

II. Public Comments

Our January 15, 2016 proposed rule provided a 30-day public comment period, which closed on February 16, 2016. We received no comments on our proposal during this period.

III. Final Action

For the reasons discussed in the January 15, 2016 proposed rule and summarized above, the EPA is approving, under CAA section 110(k)(3), CARB's submittal dated December 20, 2013 of the San Joaquin Valley 2013 Ozone Plan as a revision to the California SIP.[3] In so doing, the EPA is approving the following elements of the plan as meeting the specified requirements for the revoked 1-hour ozone standard:

- RACM demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1105(a)(1) and 51.1100(o)(17);
- ROP demonstrations as meeting the requirements of CAA section 172(c)(2) and 182(c)(2)(B), and 40 CFR 51.1105(a)(1) and 51.1100(o)(4);
- Attainment demonstration as meeting the requirements of CAA section 182(c)(2)(A), and 40 CFR 51.1105(a)(1) and 51.1100(o)(12);
- ROP contingency measures as meeting the requirements of CAA sections 182(c)(9) and 40 CFR 51.1105(a)(1) and 51.1100(o)(13); and
- Provisions for clean fuels or advanced control technology for boilers as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1105(a)(1) and 51.1100(o)(6).

The EPA is also approving the 2013 Ozone Plan as meeting the specified requirements for the revoked 1-hour ozone standard and the revoked 1997 8-hour ozone standard:

- VMT emissions offset demonstrations as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1105(a)(1) and 51.1100(o)(10).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves a state plan as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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[3] In withdrawing our approval of the 2004 1-Hour Ozone Plan, as revised and clarified, in the wake of the remand in the *Sierra Club* case, 77 FR 70376 (November 26, 2012), we inadvertently failed to remove 40 CFR 52.220(c)(371) which codified our March 8, 2010 final approval of the "2008 Clarifications" for the 2004 San Joaquin Valley (1-hour ozone) plan. In this final action, we are correcting this error by removing paragraph (c)(371) from the "Identification of Plan" section of 40 CFR part 52 for the State of California.

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

Eight Indian tribes are located within the boundaries of the San Joaquin Valley air quality planning area for the 1-hour ozone and 1997 8-hours ozone standards: The Big Sandy Rancheria of Mono Indians of California, the Cold Springs Rancheria of Mono Indians of California, the North Fork Rancheria of Mono Indians of California, the Picayune Rancheria of Chukchansi Indians of California, the Santa Rosa Rancheria of the Tachi Yokut Tribe, the Table Mountain Rancheria of California, the Tejon Indian Tribe, and the Tule River Indian Tribe of the Tule River Reservation.

The EPA's approval of the various SIP elements submitted by CARB to address the 1-hour ozone standard and 1997 8-hours ozone standard in the San Joaquin Valley would not have tribal implications because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the SIP approvals do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, the EPA has concluded that the action will not have tribal implications for the purposes of Executive Order 13175, and will not impose substantial direct costs upon the tribes, nor will it preempt Tribal law. We note that none of the tribes located in the San Joaquin Valley has requested eligibility to administer programs under the CAA.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 25, 2016.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by:

■ a. Removing and reserving paragraph (c)(371); and

■ b. Adding paragraph (c)(470) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(371) [Reserved]

* * * * *

(470) The following plan was submitted on December 20, 2013 by the Governor's designee.

(i) [Reserved]

(ii) Additional materials.

(A) California Air Resources Board.

(*1*) Letter and enclosures from Lynn Terry, Deputy Executive Officer, California Air Resources Board, dated June 19, 2014, providing supplemental information related to Appendix D ("VMT Emissions Offset Demonstration") of the San Joaquin Valley 2013 Plan for the Revoked 1-Hour Ozone Standard, excluding EMFAC2011 output files.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) 2013 Plan for the Revoked 1-Hour Ozone Standard, adopted by the San Joaquin Valley Unified Air Pollution Control District on September 19, 2013 and approved by the California Air Resources Board on November 21, 2013, excluding section 4.4 ("Contingency Reductions").

[FR Doc. 2016–07668 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0028; FRL–9944–56–Region 9]

Approval of Air Plan Revisions; Arizona; Rescissions and Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Due to the receipt of adverse comments, the Environmental Protection Agency (EPA) is withdrawing a portion of the February 11, 2016 direct final rule approving certain revisions to the Arizona State Implementation Plan (SIP) and correcting certain errors. The adverse comments relate to a particular test method and thus the EPA is withdrawing the portion of the direct final rule that relates to the test methods that include the test method for which the adverse comments were received.

DATES: The addition of paragraph (c)(29)(i)(B) published on February 11, 2016 at 81 FR 7214 is withdrawn, effective April 5, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 11, 2016, the EPA published a direct final rule approving a SIP revision submitted by the Arizona Department of Environmental Quality (ADEQ). In the February 11, 2016 direct final rule, the EPA also corrected certain errors in previous actions on prior revisions to the Arizona SIP and to make certain other corrections. In the direct final rule, the EPA stated that if adverse comments were received by March 14, 2016, the EPA would publish a timely withdrawal and address the comments in a subsequent final rule based on the proposed rule also published on February 11, 2016 (81 FR 7259). The February 11, 2016 proposed rule indicated that if the EPA receives adverse comment on an amendment, paragraph, or section of the direct final rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

In this instance, the EPA received adverse comments on a certain test method for which the EPA had approved rescission. The relevant test method was included in a SIP revision submitted by ADEQ on January 23, 1979 that also included a number of other test methods and certain performance test specifications, all of which were approved by the EPA at 47 FR 17483 (April 23, 1982). The EPA's approval of the test methods and performance test specifications submitted on January 23, 1979 and approved on April 23, 1982 was codified at 40 CFR 52.120(c)(29)(i)(A).

The EPA's action on the rescission of the test methods and performance test specifications submitted on January 23, 1979 and approved on April 23, 1982 is severable from the rest of the direct final rule. Thus, the EPA is withdrawing only the portion of the direct final rule related to those test methods and performance test specifications. The EPA will address the comments in a separate final action covering the state's rescission of the test methods and performance test specifications submitted on January 23, 1979 (and approved on April 23, 1982) based on the proposed action published on February 11, 2016 (81 FR 7259). The EPA will not open a second comment period for the action on the state's rescissions of the test methods and performance test specifications. The other actions in the February 11, 2016 **Federal Register** direct final rule are not affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 24, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

Accordingly, the addition of paragraph (c)(29)(i)(B) which was published in the **Federal Register** on February 11, 2016 (81 FR 7209) on page 7214 is withdrawn as of April 5, 2016.

[FR Doc. 2016–07666 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0696; FRL–9944–55–Region 4]

Air Plan Approval; South Carolina; Transportation Conformity Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the South Carolina State Implementation Plan (SIP) submitted on October 13, 2015, through the South Carolina Department of Health and Environmental Control (SC DHEC). This revision consists of transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect of this approval is to update the transportation conformity criteria and procedures in the South Carolina SIP to reorganize previous exhibits into a single Memorandum of Agreement (MOA) document as well as updating signatories to add the newly established Lowcountry Area Transportation Study (LATS) to the list of Metropolitan Planning Organizations (MPOs), created to represent a new urbanized area designated as a result of the 2010 Census. EPA has determined that this revision is consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective June 6, 2016 without further notice, unless EPA receives adverse comment by May 5, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0696 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is 404–562–9992. She can also be reached via electronic mail at *Sheckler.Kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Transportation Conformity

Transportation conformity (hereafter referred to as "conformity") is required under section 176(c) of the CAA to ensure that federally supported highway and transit activities are consistent with ("conform to") the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (*i.e.,* maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: Ozone, particulate matter (*e.g.,* $PM_{2.5}$ and PM_{10}), carbon monoxide, and nitrogen dioxide.

Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS) for the relevant criteria pollutants. The conformity regulation is found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. Background for This Action

A. Federal Requirements

EPA promulgated the Federal transportation conformity criteria and procedures ("Conformity Rule") on November 24, 1993. 58 FR 62188. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs, frequently referred to as "conformity SIPs." Under 40 CFR 51.390, most sections of the Conformity Rule were required to be copied verbatim into the SIP. States were also required to tailor all or portions of the following three sections of the Conformity Rule to the state's individual circumstances: 40 CFR 93.105, which addresses consultation procedures; 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in a MPO's transportation plan and transportation improvement program that must be obtained prior to a conformity determination, and the requirement that such commitments must be fulfilled; and 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

On August 10, 2005, the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA–LU) was signed into law. SAFETEA–LU revised section 176(c) of the CAA transportation conformity provisions. One of the changes streamlined the requirements for conformity SIPs. Under SAFETEA–LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and, 40 CFR 93.125(c), described above. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the Conformity Rule. These changes took effect on August 10, 2005, when SAFETEA–LU was signed into law.

B. South Carolina Transportation Conformity SIP

The Conformity Rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The conformity SIP revision must include processes and procedures to be followed by the MPO, state DOT, and US DOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the US DOT.

In 2004, EPA approved the State of South Carolina's initial conformity SIP revision which incorporated by reference 40 CFR part 93, subpart A (67 FR 50808), and customized 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) for all of the MPOs in the entire state and for the South Carolina Department of Transportation (SC DOT). 69 FR 4245. Specifically, the State of South Carolina established a MOA for implementing the conformity criteria and consultation procedures for all transportation-related pollutants. On July 28, 2009, EPA approved a revision to the SC MOA to address the relevant NAAQS and SAFTEA–LU amendments. 74 FR 37168.

III. State Submittal and EPA Evaluation

On October 13, 2015, the State of South Carolina, through SC DHEC, submitted the Statewide conformity and interagency consultation SIP, based on a new MOA signed by all of the MPOs in the State[1] and SC DOT, to EPA as a revision to the SIP. The SIP revision establishes procedures for interagency consultation and, upon EPA approval, supersedes the SIP revision that EPA approved on July 28, 2009. *See* 74 FR 37168.

Specifically, the SC DEHC is now proposing certain updates, including a reorganization that incorporates Exhibits 1 and 2 to the previous MOA into the new MOA itself, as well as the addition of the Lowcountry Area Transportation Study (LATS) to the list of MPOs which are signatories to the MOA. LATS is a newly established MPO that represents a new urbanized area designated as a result of the 2010 Census. LATS covers the Town of Hilton Head Island, the Town of Bluffton, and parts of unincorporated Beaufort County. The State also seeks approval of the following additional changes from the old MOA: Clarification of the responsibilities of the MPOs, grammar and punctuation changes, recodification of sections C, D and E for ease of reading, the addition of language to specifically address the requirements of 40 CFR 93.122(a)(4)(ii) and 93.125(c), and the addition of a new "General Provisions" section (section F).

As noted in EPA's 2009 approval, 74 FR 37168, the State of South Carolina developed its consultation SIP based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) and included it in the SIP. As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from the SC DHEC; SC DOT; all of the MPOs in the State; Federal Highway Administration—South Carolina Division; Federal Transit Administration; and the Region 4 office of EPA. The interagency committee met regularly and drafted the consultation procedures, considering elements in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes into the MOA. The resulting consultation process developed is unique to the State of South Carolina. SC DHEC offered the opportunity for a public hearing regarding the new MOA on January 6, 2015, but no hearing was requested and thus none was held. No comments, written or oral, were received from the public. The final MOA was issued by South Carolina on October 13, 2015, and subsequently submitted to EPA as a SIP revision.

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[1] Although South Carolina currently has only one nonattainment area (*i.e.,* a portion of York County) for the 2008 8-hour ozone NAAQS, its MOA covers all of the MPOs in the State should any new areas become subject to conformity requirements for a transportation-related pollutant in the future.

EPA has evaluated this SIP revision and has determined that the State has met the requirements of federal transportation conformity rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. SC DHEC has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the updated MOA as a revision to the South Carolina SIP.

EPA has reviewed the submittal to assure consistency with the CAA as amended by SAFETEA–LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable.

IV. Final Action

EPA is taking direct final action under sections 110 and 176 of the Act to approve the rule implementing the conformity criteria and consultation procedures revision to the South Carolina SIP pursuant to the CAA, as a revision to the South Carolina SIP. This action also establishes consultation procedures for all counties in South Carolina. As a result of this action, South Carolina's previously SIP-approved conformity procedures at 74 FR 37168 will be replaced by the procedures submitted to EPA on October 13, 2015, for approval and adopted by State of South Carolina on October 23, 2015.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 6, 2016 without further notice unless the Agency receives adverse comments by May 5, 2016.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 6, 2016 and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this issue of the **Federal Register;** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Incorporation by reference, Intergovernmental relations, Incorporation by reference Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 25, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart (PP)—South Carolina

■ 2. Section 52.2120(e) is amended by adding an entry at the end of the table for "South Carolina Transportation Conformity Air Quality Implementation Plan" to read as follows:

§ 52.2120(e) Identification of plan.

* * * * *

(e) * * *

EPA APPROVED SOUTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Explanation
* * * * * * *			
South Carolina Transportation Conformity Air Quality Implementation Plan.	10/23/2015	4/5/2016, [Insert citation of publication]	

[FR Doc. 2016–07811 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2016–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Dated: March 10, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Morehouse Parish, Louisiana, and Incorporated Areas Docket No.: FEMA–B–1145			
Horse Bayou	Just upstream of Cherry Ridge Road	+98	City of Bastrop, Unincorporated.
	Approximately 140 feet upstream of Louisiana Highway 830–4.	+122	Areas of Morehouse Parish.
Staulking Head Creek	Approximately 489 feet downstream of Henry Avenue	+84	City of Bastrop, Unincorporated.
	Approximately 520 feet upstream of Cleveland Street	+114	Areas of Morehouse Parish.
W–10 Canal	Approximately 4,330 feet downstream of the dam	+91	City of Bastrop, Unincorporated.
	Approximately 2,382 feet upstream of the dam	+102	Areas of Morehouse Parish.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bastrop

Maps are available for inspection at the City Hall, 200 East Jefferson Avenue, Bastrop, LA 71220.

Unincorporated Areas of Morehouse Parish

Maps are available for inspection at the Morehouse Parish Police Jury Building, 125 East Madison Avenue, Bastrop, LA 71220.

[FR Doc. 2016–07792 Filed 4–4–16; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 81, No. 65
Tuesday, April 5, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 278

RIN 0584–AE27

Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP) Clarification of Proposed Rule and Extension of Comment Period

AGENCY: Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA).

ACTION: Clarification of proposed rule; extension of comment period.

SUMMARY: This action extends the comment period and responds to questions posed by commenters about certain aspects of a proposed rule pertaining to the eligibility of Supplemental Nutrition Assistance Program (SNAP) retail food stores that was published in the **Federal Register** on February 17, 2016. The Agricultural Act of 2014 (2014 Farm Bill) amended the Food and Nutrition Act of 2008 (the Act) to increase the requirement that certain SNAP authorized retail food stores have available on a continual basis at least three varieties of items in each of four staple food categories, to a mandatory minimum of seven varieties. The 2014 Farm Bill also amended the Act to increase, for certain SNAP authorized retail food stores, the minimum number of categories in which perishable foods are required from two to three. The proposed rule would codify these mandatory requirements.

DATES: The comment period for the proposed rule that was published on February 17, 2016 (81 FR 8015) has been extended from April 18, 2016 to May 18, 2016. To be assured of consideration, comments must be postmarked on or before May 18, 2016.

ADDRESSES:

The Food and Nutrition Service (FNS), USDA, invites interested persons to submit comments. In order to ensure proper receipt, comments may only be submitted through one of the following methods:

- *Preferred method:* Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments on docket FNS–2016–0018.
- *Mail:* Written comments should be addressed to Vicky Robinson, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Room 418, 3101 Park Center Drive, Alexandria, Virginia 22302.

All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via: *http://www.regulations.gov.* All submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Address any questions regarding this notice to Vicky Robinson, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division at the Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Ms. Robinson can also be reached by telephone at (703)-305–2476 or by email at *Vicky.Robinson@fns.usda.gov* during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

The Agricultural Act of 2014 (2014 Farm Bill) amended the Food and Nutrition Act of 2008 (the Act) to increase the requirement that certain SNAP authorized retail food stores have available on a continual basis at least three varieties of items in each of four staple food categories, to a mandatory minimum of seven varieties. The 2014 Farm Bill also amended the Act to increase, for certain SNAP authorized retail food stores, the minimum number of categories in which perishable foods are required from two to three. The proposed rule would codify these mandatory requirements.

Further, using existing authority in the Act and feedback from a Request for Information that was published in the **Federal Register** on August 20, 2013, and that included five listening sessions in urban and rural locations across the nation and generated 233 public comments, FNS proposed several additional changes. Among other items, these proposed changes would address depth of stock, amend the definition of staple foods, and amend the definition of "retail food store" to clarify when a retailer is a restaurant rather than a retail food store.

Additionally, this action extends the comment period for the proposed rule. Since publication of the proposed rule, several entities have requested an extension of the comment period in order to allow ample time for all stakeholders to comment on the rulemaking process. The comment period, therefore, is being extended 30 days in order to provide additional time for interested parties to review and comment on this proposed rule. To be assured of consideration, comments on this proposed rule must be received by FNS on or before May 18, 2016.

II. Clarification and Request For Comment

Commenters have posed similar questions to FNS concerning provisions of the proposed rule, in some instances indicating possible misunderstandings of the proposal. FNS appreciates these comments and for this reason, as well as to help ensure that comments submitted are of most value to the Agency, FNS is providing the following additional clarifications and requests for comment regarding certain provisions proposed in this rule.

FNS encourages commenters to review and comment on all of the issues raised in the proposed rulemaking, as well as on issues examined in the supporting Regulatory Impact Analysis and Interim Regulatory Flexibility Analysis prepared for the proposed rule and published as part of the docket in Supporting Documents on Regulations.gov.

1. Under the proposed rule, what would be the varieties of items retailers would need to stock?

As required by Section 3(o)(1)(A) of the Food and Nutrition Act of 2008 (the Act), as amended by the Agricultural Act of 2014 (2014 Farm Bill), retailers would be required to stock at least 7 varieties in each of the 4 staple food categories. Section 3(q) of the Act defines the 4 staple food categories as dairy products; breads and cereals; meats, poultry, and fish; and fruits and vegetables. FNS does not have discretion to alter the statutory 7 variety requirement.

However, FNS appreciates the questions it has received from commenters inquiring about the items that constitute variety under the proposed rule in the four staple food categories and encourages additional comments from the public on this point. FNS is particularly interested in comments from the public as to whether and how variety should take into account the differences between products within staple food categories (generally and individually), and what factors should be considered when making such distinctions.

For example, for purposes of variety in the meat, poultry, and fish category, FNS would appreciate public comments on whether to consider food items that come from the same type of animal or species as separate varieties in this food category (*e.g.*, raw chicken breast versus refrigerated grilled chicken breast; roast beef versus ground beef; sliced turkey versus turkey bacon; fresh bluefin tuna steaks versus canned albacore tuna). FNS would also appreciate public comments regarding the basis by which one could consider food items that come from the same type of animal or species as separate varieties, in this or other staple food categories. Finally, FNS would like to clarify its intent in the proposed rule for the meat, poultry, and fish staple food category to include other varieties, such as eggs and meat alternatives (*e.g.*, tofu, gluten, or mycoprotein).

Examples of how a retailer might stock 7 varieties in each of the 4 staple food categories follow further below.

2. Under the proposed rule, how many perishable items would retailers need to stock?

Section 3(o)(1)(A) of the Act, as amended by the 2014 Farm Bill, requires that retailers would be required to stock "perishable foods in at least 3 of the [staple food] categories." Therefore, FNS has proposed to codify in regulation the statutory requirement that retailers stock at least one perishable variety in 3 of the 4 staple food categories.

The proposed rule does not propose to change the meaning of "perishable" in the current regulations. Currently, under 7 CFR 278.1(b)(1)(ii)(B), *perishable foods* include items that are either frozen or refrigerated staple food items and as well as fresh, unrefrigerated staple food items that will spoil or suffer significant deterioration in quality within 2 to 3 weeks (*e.g.*, bread).

An example of how a retailer might meet the perishables requirement with one perishable variety in 3 of the 4 staple food categories follows further below.

3. Under the proposed rule, what would qualify as multiple ingredient foods?

Currently, 7 CFR 271.2 provides that "commercially processed foods and prepared mixtures with multiple ingredients shall only be counted in one staple food category" for the purposes of determining eligibility of any firm.

Under the proposed rule, commercially processed foods and prepared mixtures with multiple ingredients that do not represent a single staple food category (*e.g.*, cold pizza, macaroni and cheese, sandwiches, TV dinners, mixed soup varieties, and pot pies), would not be counted (toward variety, perishables, or depth of stock) as staple foods for purposes of determining a firm's eligibility to participate in SNAP as a retail food store. Under the proposed rule, multiple ingredient foods would not include such items as yogurt, cheeses, and cereals, as the primary staple food ingredient is clearly represented and easily recognized.

FNS appreciates the questions it has received from commenters on multiple ingredient foods under the proposed rule and encourages additional comments from the public on this provision of the proposed rule. FNS is particularly interested in comments from the public as to whether certain types of foods with multiple ingredients should continue to be counted as staple foods, including toward variety, perishables, or depth of stock requirements. For example, for the purposes of staple food categorization, FNS would appreciate public comments on whether and how to categorize certain foods with multiple staple food ingredients, such as prepared salads, pizzas, pot pies, macaroni and cheese, stuffed pastas, and others, as offered by commenters, for purposes of making a retailer eligibility determination for SNAP authorization.

Examples of additional multiple ingredient foods that would and would not count as staple foods under the proposed rule follow.

Multiple ingredient foods are currently eligible for purchase with SNAP benefits, and this proposed rule would not change the eligibility of these foods for purchase with SNAP benefits in authorized stores.

4. Under the proposed rule, how many total items would retailers be required to stock?

Currently SNAP regulations require that SNAP authorized stores have available on a continuous basis at least 3 varieties of items in each of the 4 staple food categories with perishable varieties in at least 2 of the 4 staple food categories. Under current SNAP regulations, retailers may be SNAP authorized with a minimum stock of at least 12 food items, including at least 2 perishable items. As noted in the proposed rule, these requirements have been changed by the Food and Nutrition Act of 2008 (the Act), as amended by the Agricultural Act of 2014 (2014 Farm Bill).

Section 3(o)(1)(A) of the Act now requires that retailers stock at least 7 varieties in each of the 4 staple food categories and perishable foods in at least 3 of the 4 staple food categories. That means that retailers are required to stock 28 items on a continuous basis. At least 3 of these items must be perishable.

Under the proposed rule, which would require a depth of stock defined as 6 stocking units, SNAP-authorized retailers would be required to stock a new minimum inventory requirement of 168 staple food items.

Based on the statutory requirement that at least 1 perishable variety be stocked in 3 of the 4 staple food categories, and with depth of stock discretionarily defined as 6 stock keeping units, this proposed rule would require that a store stock at least 18 perishable staple food items (within the 168 staple food item total).

According to Department analysis, contained in the Interim Regulatory Flexibility Analysis prepared for the proposed rule and published as part of the docket in Supporting Documents on Regulations.gov, the average small store would need to add an additional 54 additional staple food items, at a cost of around $140, in order to meet the proposed eligibility criteria. As set forth in the Interim Regulatory Flexibility Analysis for the proposed rulemaking, FNS estimates that purchasing all 168 staple food items would cost a store approximately $400, including a one-time inventory carrying cost of 25% to account for storage costs and potential spoilage. FNS believes that adding new inventory would be a one-time cost, a cost that would be recouped as inventory is sold.

See the full Regulatory Impact Analysis and Interim Regulatory

Flexibility Analysis for further details. *https://www.regulations.gov/#!documentDetail;D=FNS-2016-0018-0006.*

More generally, FNS appreciates the questions it has received from commenters on the number of total food items that retailers would be required to stock under the proposed rule and encourages additional comments from the public on this provision of the proposed rule, including comments on the impacts (such as benefits, costs, or small business impacts) associated with proposals that would alter the total food items that retailers would be required to stock.

FNS also appreciates the questions from commenters it has received regarding how the proposed requirements would affect different types of retail food stores and encourages additional comments from the public on potential retail food store impacts.

EXAMPLES of Acceptable Variety, Perishables, and Depth of Stock Under the Proposed Rule

Meat, Poultry, and Fish—the proposed rule would require stocking at least 7 varieties in this staple food category; below are ten examples of what FNS would consider different varieties. This is an illustrative list and not an exhaustive list of items that FNS proposes to be acceptable varieties in this staple food category.

Perishable:

1. Sliced turkey breast—6 packages
2. Shrimp—6 packages
3. Sliced ham—6 packages
4. Fresh or frozen ground beef– 6 packages
5. Fresh or frozen catfish—6 packages
6. Eggs—6 cartons (any size)
7. Frozen lamb chops—6 packages
8. Tofu (meat substitute)—6 packages

Non-perishable:

9. Canned tuna—6 cans
10. Canned chicken—6 cans

Fruits, Vegetables—the proposed rule would require stocking at least 7 varieties in this category; below are ten examples of what FNS would consider different varieties. This is not an exhaustive list of acceptable varieties in this staple food category. Under the proposed rule, the first 7 varieties listed below would be considered perishable varieties in this staple food group, provided that they will spoil or suffer significant deterioration in quality within 2 to 3 weeks.

Perishable:

1. Fresh bananas—6 bananas
2. Fresh oranges—6 oranges
3. Fresh pears—6 pears
4. Frozen raspberries—6 packages
5. Frozen spinach—6 packages
6. Fresh baby carrots—6 packages
7. Fresh celery sticks—6 packages

Non-Perishable:

8. Apple sauce—6 jars
9. Canned corn—6 cans
10. Canned peas—6 cans

Dairy—the proposed rule would require stocking at least 7 varieties in this category; below are ten examples of what FNS would consider different varieties This is not an exhaustive list of acceptable varieties in this staple food category. Under the proposed rule, the first 8 varieties listed below would likely be considered perishable varieties in this staple food group, provided that they will spoil or suffer significant deterioration in quality within 2 to 3 weeks.

Perishable:

1. Fresh cow's milk—6 containers
2. Fresh goat's milk—6 containers
3. Fresh yogurt—6 containers
4. Fresh sour cream—6 packages
5. Fresh cheddar cheese (hard)—6 packages
6. Fresh cream cheese (soft)—6 packages
7. Frozen butter—6 packages
8. Margarine—6 containers

Non-Perishable:

9. Infant Formula—6 containers
10. Almond Milk—6 containers

Breads or Cereals—the proposed rule would require stocking at least 7 varieties in this category; below are ten examples of what FNS would consider different varieties. This is not an exhaustive list of acceptable varieties in this staple food category. Under the proposed rule, the first 5 varieties listed below would likely be considered perishable varieties in this staple food group, provided that they will spoil or suffer significant deterioration in quality within 2 to 3 weeks.

Perishable:

1. Bread—any combination (wheat, white, rye)—6 packages
2. Tortillas (flour, corn)—6 packages
3. Bagels (white, wheat, other)—6 items
4. Pitas—6 packages
5. Frozen dinner rolls—6 packages

Non-Perishable:

6. Rice—any combination (long-grain, brown)—6 packages
7. Pasta—any combination (spaghetti, lasagna noodles, rice noodles)—6 packages
8. Cereal– any combination (wheat, rice, chex, granola, etc)—6 packages
9. Flour (white, wholegrain, any combination)—6 packages
10. Infant Cereal—6 packages

EXAMPLES of Multiple Ingredient Foods That Would be Excluded for Purposes of Retailer Eligibility Decisions Under the Proposed Rule

- Pizzas (contains dough, cheese, and tomato)
- Multiple ingredient soups, *e.g.* minestrone (contains vegetables and pasta)
- Multiple ingredient canned foods, *e.g.* ravioli (contains vegetables, cheese, and pasta)
- Chicken pot pies (contains dough, vegetables, and chicken)
- Frozen TV dinners, *e.g.* chicken dinner (contains chicken, potatoes, and vegetables)
- Sandwiches (contains meat, cheese, bread, and vegetables)
- Lunch-snack trays (contains meat, cheese, and crackers)

EXAMPLES of Multiple Ingredient Foods That Would Continue to Count as Staple Foods (i.e., the Primary Staple Food Category Ingredient is Clearly Represented and Easily Recognized)

- Mixed vegetables (frozen or canned; contains a variety of vegetables)
- Boxed breakfast cereals (intended to served heated or cold; contains a variety of grains)

III. Comment Period Extension

Since publication of the proposed rule, several entities, including SNAP retail trade groups, have requested an extension of the comment period in order to allow ample time for all stakeholders to comment on the rulemaking process. The comment period, therefore, is being extended 30 days in order to provide additional time for interested parties to review the proposed rule. To be assured of consideration, comments on the proposed rule must be received by FNS on or before May 18, 2016.

Dated: March 31, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–07793 Filed 4–4–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 31

[Docket No. FAA–2016–5424; Notice No. 31–16–01–SC]

Special Conditions: Ultramagic, S.A., Mark-32 Burner Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Ultramagic, S.A., balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90. These models will have a novel or unusual design feature associated with having the new Mark-32 Burner series. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before May 5, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–5424 using any of the following methods:

☐ *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

☐ *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

☐ *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

☐ *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John VanHoudt, FAA, Program and Procedures Branch, ACE–114, Small Airplane Directorate, Aircraft Certification Service, 901 Locust; Kansas City, Missouri 64106; telephone (816) 329–4142; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On September 21, 2014, Ultramagic, S.A. (Ultramagic) applied for a change to Type Certificate No. B02CE to incorporate the new Mark–32 (MK–32) Burner series in balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90. The MK–32 Burner series is a derivative of the MK–10 Burner series, which are currently approved under TCDS B02CE.

The MK–32 burner does introduce a particular novel aspect in terms of operation and performance—the primary modification being an oxygen augmented igniter system.

Type Certification Basis

Under the provisions of § 21.101, Ultramagic must show that the balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90, as changed, continues to meet the applicable provisions incorporated by reference in Type Certificate No. B02CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The Direccion General de Aviacion Civil originally type certificated this aircraft under its type certificate Numbers 3, 4, 18, 61, 147, and 247. The FAA validated these products under U.S. Type Certificate Number B02CE. On September 28, 2003, EASA began oversight of this product on behalf of Spain. The regulations incorporated by reference in B02CE are as follows:

a. 14 CFR 21.29.

b. 14 CFR part 31, effective on January 1990, as amended by 31–1 through 31–5 inclusive. Application for Type Certificate dated June 5, 1997.

c. Equivalent level of Safety findings per provision of 14 CFR 21.21(b)(1):

(1) ACE–08–15[1], August 1, 2008, Burners, 14 CFR 31.47(d).

(2) ACE–08–15A[2], November 05, 2013, Burners, 14 CFR 31.47(d), for Model S–70.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 31) do not contain adequate or appropriate safety standards for balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

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[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgELOS.nsf/0/BE4DB369A87F7A7A86257C210072E48A?OpenDocument&Highlight=ace-08-15.*

[2] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgELOS.nsf/0/BE4DB369A87F7A7A86257C210072E48A?OpenDocument&Highlight=ace-08-15.*

Novel or Unusual Design Features

The Model Numbers F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 balloons will incorporate the following novel and unusual design feature:

The oxygen augmentation and hydraulic control.

Discussion

Based on the provisions of §§ 21.17 and 21.29 and the U.S.-EASA Technical Implementation Procedures for Airworthiness and Environmental Certification Between the Federal Aviation Administration of the United States of America and the European Aviation Safety Agency of the European Union, the following airworthiness requirements are applicable to this project and will remain active for three years from the date of application and form the Certification Basis:

a. Part 31, amendment 7 (The certification basis complied with according to the Ultramagic part 31 compliance checklist.).

b. Equivalent Level of Safety (ELOS) Findings: The FAA notes that it has issued an equivalent level of safety findings per provision of 14 CFR 21.21(b)(1), specifically ACE–08–15[3] on August 1, 2008, Burners, § 31.47(d) and then extended the ELOS as ACE–08–15A[4] on November 05, 2013, Burners, § 31.47(d), for the Model S–70. This ELOS has not been applied to the MK–32 and therefore not applicable.

3. Special conditions: The FAA notes that Ultramagic elected to comply with certain provisions of CS–23, amendment 3, that apply to oxygen systems. These provisions are applicable because there is an oxygen augmented igniter system available for the MK–32 burner. The below 14 CFR regulations, except § 23.1445, are harmonized with their CS–23, amendment 3, counterpart regulations and form the basis of this special condition.

§ 23.1445, Oxygen distribution system, paragraphs (a) and (b) states the following:

> (a) Except for flexible lines from oxygen outlets to the dispensing units, or where shown to be otherwise suitable to the installation, nonmetallic tubing must not be used for any oxygen line that is normally pressurized during flight.
>
> (b) Non-metallic oxygen distribution lines must not be routed where they may be subjected to elevated temperatures, electrical arcing, and released flammable fluids that might result from any probable failure.

§ 23.1451, Fire protection for oxygen equipment, paragraphs (a), (b), and (c) states the following:

> Oxygen equipment and lines must—
>
> (a) Not be in any designated fire zone.
>
> (b) Be protected from heat that may be generated in, or escaped from, any designated fire zone.
>
> (c) Be installed so that escaping oxygen cannot cause ignition of grease, fluid, or vapour accumulations that are present in normal operation or that may result from the failure or malfunction of any other system.

§ 23.1453, Protection of oxygen equipment from rupture, paragraphs (a) and (b) states the following:

> (a) Each element of the oxygen system must have sufficient strength to withstand the maximum pressure and temperature in combination with any externally applied loads arising from consideration of limit structural loads that may be acting on that part of the system.
>
> (b) Oxygen pressure sources and the lines between the source and shutoff means must be:
>
> (1) Protected from unsafe temperatures; and
>
> (2) Located where the probability and hazard of rupture in a crash landing are minimized.

§ 23.1445 is the only significant regulatory difference, which states the following:

> Part 23 requires crewmembers be able to reserve a minimum supply for themselves when they share a common source of O2 with passengers.

As the oxygen system is not utilized for breathing, this Significant Standard Difference (SSD) does not apply.

In addition, the FAA notes that Ultramagic offers an optional hydraulic kit. This kit is a hydraulic system that actuates the burners' fuel valve. Since part 31 does not have provisions for hydraulic systems, § 23.1435, Hydraulic systems, will provide the basis for the hydraulic system special conditions contained herein. No SSD is associated with this regulation.

Applicability

As discussed above, these special conditions are applicable to the Model Numbers F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 balloons. Should Ultramagic, S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of burners. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 31

Aircraft, Aviation safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Model Numbers F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 balloons.

1. Certification of the MK–32 Burner Series under 14 CFR part 31.

(a) In addition to the provisions of part 31, amendment 7, the applicant must design the MK–32 Burner to comply with the requirements, as described below, with respect to the igniter oxygen augmentation system and hydraulic burner valve actuation system:

Oxygen Distribution System

(1) Except for flexible lines from oxygen outlets to the dispensing units, or where shown to be otherwise suitable to the installation, nonmetallic tubing must not be used for any oxygen line that is normally pressurized during flight.

(2) Nonmetallic oxygen distribution lines must not be routed where they may be subjected to elevated temperatures, electrical arcing, and released flammable fluids that might result from any probable failure.

Fire Protection for Oxygen Equipment

Oxygen equipment and lines must:

(1) Not be installed in any designated fire zones.

(2) Be protected from heat that may be generated in, or escape from, any designated fire zone.

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[3] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgELOS.nsf/0/BE4DB369A87F7A7A86257C210072E48A?OpenDocument&Highlight=ace-08-15.*

[4] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgELOS.nsf/0/BE4DB369A87F7A7A86257C210072E48A?OpenDocument&Highlight=ace-08-15.*

(3) Be installed so that escaping oxygen cannot come in contact with and cause ignition of grease, fluid, or vapor accumulations that are present in normal operation or that may result from the failure or malfunction of any other system.

Protection of Oxygen Equipment From Rupture

(1) Each element of the oxygen system must have sufficient strength to withstand the maximum pressure and temperature, in combination with any externally applied loads arising from consideration of limit structural loads that may be acting on that part of the system.

(2) Oxygen pressure sources and the lines between the source and the shutoff means must be:

(i) Protected from unsafe temperatures; and

(ii) Located where the probability and hazard of rupture in a crash landing are minimized.

Hydraulic Systems

(1) Design. Each hydraulic system must be designed as follows:

(i) Each hydraulic system and its elements must withstand, without yielding, the structural loads expected in addition to hydraulic loads.

(ii) A means to indicate the pressure in each hydraulic system which supplies two or more primary functions must be provided to the flight crew.

(iii) There must be means to ensure that the pressure, including transient (surge) pressure, in any part of the system will not exceed the safe limit above design operating pressure and to prevent excessive pressure resulting from fluid volumetric changes in all lines which are likely to remain closed long enough for such changes to occur.

(iv) The minimum design burst pressure must be 2.5 times the operating pressure.

(2) Tests. Each system must be substantiated by proof pressure tests. When proof tested, no part of any system may fail, malfunction, or experience a permanent set. The proof load of each system must be at least 1.5 times the maximum operating pressure of that system.

(3) Accumulators. A hydraulic accumulator or reservoir may be installed on the engine side of any firewall, if—

(i) It is an integral part of an engine or propeller system; or

(ii) The reservoir is nonpressurized and the total capacity of all such nonpressurized reservoirs is one quart or less.

(b) Ultramagic, through EASA, will provide the FAA with all Airworthiness Directives issued against the changed type design, if any, and a plan for resolving the unsafe conditions for the FAA type design.

Issued in Kansas City, Missouri, on March 28, 2016.

Mel Johnson,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 2016–07786 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5039; Directorate Identifier 2013–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2000–10–18, that applies to certain Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. AD 2000–10–18 requires repetitive inspections to detect cracks in the lower spar of the engine pylons between ribs 6 and 7, and repair if necessary. Since we issued AD 2000–10–18, we have determined that the compliance times for the initial inspection and the repetitive intervals must be reduced to allow timely detection of cracks in the engine pylon's lower spar between ribs 6 and 7. This proposed AD would reduce the compliance times for the initial inspection and the repetitive intervals. We are proposing this AD to prevent fatigue cracking, which could result in reduced structural integrity of the engine pylon's lower spar, and possible separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by May 20, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5039; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5039; Directorate Identifier 2013–NM–148–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On May 16, 2000, we issued AD 2000–10–18, Amendment 39–11742 (65 FR 34055, May 26, 2000). AD 2000–10–18 requires actions intended to address an unsafe condition on certain Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes.

Since we issued AD 2000–10–18, Amendment 39–11742 (65 FR 34055, May 26, 2000), we have determined that the compliance times for the initial inspection and the repetitive intervals must be reduced to allow timely detection of cracks in the engine pylon's lower spar between ribs 6 and 7.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0167, dated July 26, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition. The MCAI states:

> Cracks were found between ribs 6 and 7 in the lower spar of engine pylons on A310, A300 and A300–600 aeroplanes. To prevent crack initiation, a first inspection programme of this area was rendered mandatory by DGAC [Direction Générale de l'Aviation Civile] France AD 93–228–154 (later revised, currently at Revision 3) [*http://ad.easa.europa.eu/blob/19932283tb__Superseded.pdf/AD_F-1993-228-154R3_1*] [which corresponds to certain actions in in FAA AD 2000–10–18, Amendment 39–11742 (65 FR 34055)] for A300 and A300–600 aeroplanes.
>
> At a later date and due to new findings, a specific inspection programme for A310 aeroplanes was rendered mandatory by DGAC France AD 1999–239–287(B) [which corresponds to certain other actions in FAA AD 2000–10–18, Amendment 39–11742 (65 FR 34055, May 26, 2000)]. That [French] AD was later superseded by EASA AD 2008–0001 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0001_Superseded.pdf/AD_2008-0001_1*], which introduced new thresholds and intervals in the frame of the A310 extended service goal (ESG) exercise.
>
> Since DGAC France AD 1993–228–154(B)R3 and EASA AD 2008–0001 were issued, a fleet survey and updated Fatigue and Damage Tolerance analyses have been performed in order to substantiate the second ESG for A300–600, called ESG2 exercise. The results of these analyses have shown that the inspection threshold and interval must be reduced to allow timely detection of cracks in the engine pylon lower spar between ribs 6 and 7.
>
> For the reasons described above, this new [EASA] AD retains the requirements of DGAC France AD 1993–228–154(B)R3 and EASA AD 2008–0001, which are superseded, and requires accomplishment of the [eddy current or liquid penetrant] inspections [for cracking] and, depending on findings, [related investigative and] corrective actions [repairs], within the new thresholds and intervals specified in Airbus Service Bulletin (SB) A300–54–0073 Revision 03 [dated October 11, 2012] or SB A310–54–2017 Revision 06 [dated October 3, 2012] or SB A300–54–6014 Revision 07 [dated September 5, 2012].

Related investigative actions include eddy current or liquid penetrant inspections for cracking of areas with removed protection. The unsafe condition is cracking in the lower spar of the engine pylons between ribs 6 and 7, which could result in reduced structural integrity of the engine pylon's lower spar, and possible separation of the engine from the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–5039.

The compliance times for the inspections vary, depending on airplane configuration and utilization as follows.

For Model A300–600 series airplanes:

- The compliance time for the initial inspection is before the accumulation of 10,900 total flight cycles.
- The compliance times for the repetitive inspection interval are 5,700 flight cycles for pre-doubler modified airplanes; and for post-doubler modified airplanes, the compliance times range from 7,200 flight cycles or 8,200 flight hours, to 8,400 flight cycles or 16,000 flight hours.
- The compliance times for the initial inspection following crack repair range from 5,200 flight cycles or 5,900 flight hours, to 6,600 flight cycles or 13,400 flight hours; and the compliance times for the post-repair repetitive inspection range from 2,200 flight cycles or 2,500 flight hours, to 3,400 flight cycles or 6,900 flight hours.

For Model A300 series airplanes:

- The compliance times for the initial inspection range from before the accumulation of 4,400 total flight cycles to 9,400 total flight cycles.
- The compliance times for the repetitive inspection interval range from 4,400 flight cycles to 6,100 flight cycles.
- The initial inspection compliance times for post-doubler modified airplanes range from 12,700 flight cycles or 25,700 flight hours, to 20,700 flight cycles or 30,900 flight hours after the modification; the post-doubler repetitive inspection interval ranges from 7,800 flight cycles or 16,600 flight hours, to 12,200 flight cycles or 18,200 flight hours.
- The compliance times for the initial post-repair inspection range from 6,500 flight cycles or 13,900 flight hours, to 10,200 flight cycles or 15,200 flight hours; and the post-repair repetitive inspection interval ranges from 4,700 flight cycles or 10,000 flight hours, to 11,000 flight cycles or 23,300 flight hours.

For Model A310 series airplanes:

- The compliance times for the initial inspection range from before the accumulation of 3,000 total flight cycles or 14,900 total flight hours, to 6,400 total flight cycles or 12,800 total flight cycles.
- The compliance times for the repetitive inspection interval range from 4,600 flight cycles or 23,800 flight hours, to 6,200 flight cycles or 12,400 flight hours.
- The initial inspection compliance times for post-doubler modified airplanes range from 7,500 flight cycles or 37,200 flight hours, to 11,000 flight cycles or 22,000 flight hours after the modification; the post-doubler repetitive inspection interval ranges from 5,900 flight cycles or 29,500 flight hours, to 6,500 flight cycles or 13,000 flight hours.
- The compliance times for the initial post-repair inspection range from 4,500 flight cycles or 23,700 flight hours, to 5,400 flight cycles or 10,800 flight hours; and the post-repair repetitive inspection interval ranges from 2,500 flight cycles or 12,200 flight hours, to 2,800 flight cycles or 5,600 flight hours.

Related Service Information Under 1 CFR part 51

Airbus has issued the following service bulletins.

- Airbus Service Bulletin A300–54–0073, Revision 03, dated October 11, 2012 (for Model A300 series airplanes).
- Airbus Service Bulletin A300–54–6014, Revision 07, dated September 5, 2012 (for Model A300–600 series airplanes).
- Airbus Service Bulletin A310–54–2017, Revision 06, dated October 3, 2012 (for Model A310 series airplanes).

This service information describes procedures for inspecting for cracking of the engine pylon's lower spar between ribs 6 and 7 and related investigative actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

Unlike the procedures described in the following service information, this proposed AD would not permit further flight if cracks are detected in the lower spar of the engine pylons between ribs 6 and 7. We have determined that, because of the safety implications and consequences associated with that cracking, any cracked lower spar of the engine pylons between ribs 6 and 7 must be repaired or modified before further flight. This difference has been coordinated with the EASA.

- Airbus Service Bulletin A300–54–0073, Revision 03, dated October 11, 2012 (for Model A300 series airplanes).
- Airbus Service Bulletin A300–54–6014, Revision 07, dated September 5, 2012 (for Model A300–600 series airplanes).
- Airbus Service Bulletin A310–54–2017, Revision 06, dated October 3, 2012 (for Model A310 series airplanes).

Where the "Grace periods" specified in paragraph 1.E., "Compliance," of the service information identified previously contain ambiguous language, *i.e.*, "for aircraft that have already exceeded or are close to exceed the threshold or scheduled interval," this proposed AD does not include that language. We have clarified this exception to the service information in paragraph (i)(2) of this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 156 airplanes of U.S. registry.

We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $79,560, or $510 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–10–18, Amendment 39–11742 (65 FR 34055, May 26, 2000), and adding the following new AD:

Airbus: Docket No. FAA–2016–5039; Directorate Identifier 2013–NM–148–AD.

(a) Comments Due Date

We must receive comments by May 20, 2016.

(b) Affected ADs

This AD replaces AD 2000–10–18, Amendment 39–11742 (65 FR 34055, May 26, 2000).

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(6) of this AD, certificated in any category, except airplanes on which Airbus Modification 10149 has been incorporated in production.

(1) Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Airbus Model A300 B4–605R and B4–622R airplanes.

(4) Airbus Model A300 F4–605R and F4–622R airplanes.

(5) Airbus Model A300 C4–605R Variant F airplanes.

(6) Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by a determination that the inspection compliance time and repetitive interval must be reduced to allow timely detection of cracks in the engine pylon's lower spar between ribs 6 and 7. We are issuing this AD to prevent fatigue cracking, which could result in reduced structural integrity of the engine pylon's lower spar, and possible separation of the engine from the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections and Corrective Actions

Except as provided by paragraphs (i)(1) and (i)(2) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of the applicable Airbus service bulletin specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Do an eddy current or liquid penetrant inspection for cracking of the engine pylon's lower spar between ribs 6 and 7; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of the applicable Airbus service bulletin specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, except as required by paragraph (i)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the engine pylon's lower spar between ribs 6 and 7 thereafter at the applicable time and intervals specified in paragraph 1.E., "Compliance," of the applicable Airbus service bulletin specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD until a repair or modification specified in the Accomplishment Instructions of the applicable Airbus service bulletin identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD is done.

Note 1 to paragraph (g) of this AD: An additional source of guidance for accomplishing the modification specified in Airbus Service Bulletin A300–54–0073, Revision 03, dated October 11, 2012, can be found in Airbus Service Bulletin A300–54–0080, Revision 02, dated July 9, 2002.

Note 2 to paragraph (g) of this AD: An additional source of guidance for accomplishing the modification specified in Airbus Service Bulletin A300–54–6014, Revision 07, dated September 5, 2012, can be found in Airbus Service Bulletin A300–54–6020, Revision 02, dated July 9, 2002.

Note 3 to paragraph (g) of this AD: An additional source of guidance for accomplishing the modification specified in Airbus Service Bulletin A310–54–2017, Revision 06, dated October 3, 2012, can be found in Airbus Service Bulletin A310–54–2023, Revision 03, dated July 9, 2002.

(1) Airbus Service Bulletin A300–54–0073, Revision 03, dated October 11, 2012 (for Model A300 series airplanes).

(2) Airbus Service Bulletin A300–54–6014, Revision 07, dated September 5, 2012 (for Model A300–600 series airplanes).

(3) Airbus Service Bulletin A310–54–2017, Revision 06, dated October 3, 2012 (for Model A310 series airplanes).

(h) Post-Repair/Modification and Corrective Actions

For airplanes on which any repair or modification specified in the Accomplishment Instructions of the applicable Airbus service bulletin identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD is done: Except as provided by paragraphs (i)(1) and (i)(2) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of the applicable Airbus service bulletin specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Do an eddy current or liquid penetrant inspection for cracking of the engine pylon's lower spar between ribs 6 and 7; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of the applicable Airbus service bulletin specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, except as required by paragraph (i)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the engine pylon's lower spar between ribs 6 and 7 thereafter at the applicable time and intervals specified in paragraph 1.E., "Compliance," of the applicable Airbus service bulletin specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(i) Exceptions to Service Information

(1) Where a "Threshold" is specified in paragraph 1.E., "Compliance," of the service information specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, the "FC" and "FH" compliance times are total flight cycle and total flight hour compliance times, except that if a repair or service bulletin identified in paragraph 1.E., "Compliance," of the service bulletins specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD has been done, the "FC" and "FH" compliance times are flight cycle and flight hour compliance times since the identified repair or service bulletin was done.

(2) Except as provided by paragraphs (i)(2)(i) and (i)(2)(ii) of this AD: For the "Grace period" specified in paragraph 1.E., "Compliance," of the service information specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, operators must comply with the actions specified in paragraphs (g) and (h) of this AD, as applicable, at the later of the applicable times in the "Threshold" and "Grace Period" specified in paragraph 1.E., "Compliance," of the service information, except the language "for aircraft that have already exceeded or are close to exceed the threshold or scheduled interval" does not apply.

(i) Where Airbus Service Bulletin A300–54–0073, Revision 03, dated October 11, 2012; and Airbus Service Bulletin A310–54–2017, Revision 06, dated October 3, 2012; specify a compliance time ". . . after receipt of this Inspection Service Bulletin without exceeding the requirements of previous issue of this ISB," this AD requires compliance within the specified compliance time after the effective date of this AD.

(ii) Where Airbus Service Bulletin A300–54–6014, Revision 07, dated September 5, 2012, specifies a compliance time ". . . after receipt of this Inspection Service Bulletin without exceeding the requirements of previous issue of this SB," this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) If any crack is found during any inspection required by this AD and an Airbus service bulletin specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD specifies to contact Airbus: Before further flight, repair the crack using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using an applicable service bulletin specified in paragraphs (j)(1) through (j)(10) of this AD.

(1) Airbus Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994 (for Model A300 series airplanes), which is incorporated by reference in AD 96–11–05, Amendment 39–9630 (61 FR 26091, May 24, 1996).

(2) Airbus Service Bulletin A300–54–0073, Revision 02, dated July 9, 2002 (for Model A300 series airplanes), which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994 (for Model A300–600 series airplanes), which is incorporated by reference in AD 96–11–05, Amendment 39–9630 (61 FR 26091, May 24, 1996).

(4) Airbus Service Bulletin A300–54–6014, Revision 03, dated June 4, 1998 (for Model A300–600 series airplanes), which is not incorporated by reference in this AD.

(5) Airbus Service Bulletin A300–54–6014, Revision 04, dated March 9, 2002 (for Model A300–600 series airplanes), which is not incorporated by reference in this AD.

(6) Airbus Service Bulletin A300–54–6014, Revision 05, dated September 1, 2011 (for Model A300–600 series airplanes), which is not incorporated by reference in this AD.

(7) Airbus Service Bulletin A300–54–6014, Revision 06, dated May 24, 2012 (for Model A300–600 series airplanes), which is not incorporated by reference in this AD.

(8) Airbus Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999 (for Model A310 series airplanes), which is incorporated by reference in AD 2000–10–18, Amendment 39–11742 (65 FR 34055, May 26, 2000).

(9) Airbus Service Bulletin A310–54–2017, Revision 04, dated July 9, 2002 (for Model A310 series airplanes), which is not incorporated by reference in this AD.

(10) Airbus Service Bulletin A310–54–2017, Revision 05, dated November 16, 2007 (for Model A310 series airplanes), which is not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by

the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0167, dated July 26, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–5039.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 24, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07569 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5040; Directorate Identifier 2013–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A300 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by the determination that certain existing inspection thresholds and intervals must be reduced. This proposed AD would require repetitive detailed inspections for corrosion, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct corrosion and cracking on the lower wing root joint, which could reduce the structural integrity of the airframe.

DATES: We must receive comments on this proposed AD by May 20, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5040; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5040; Directorate Identifier 2013–NM–192–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0230, dated September 24, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A300 and A300–600 series airplanes. The MCAI states:

> Several cases of corrosion on the lower wing root joint, located in the wing bottom skin inboard and outboard of the external lower surface splice, have been reported by operators.
>
> This condition, if not detected and corrected, could affect the structural integrity of the airframe.
>
> Prompted by these findings, [Directorate General for Civil Aviation] (DGAC) France issued AD 1997–006–210 [which corresponds to FAA AD 98–21–34, Amendment 39–10842 (63 FR 55524, October 16, 1998)] to require repetitive inspections to detect the presence of corrosion and prevent crack propagation at the wing bottom skin, inboard and outboard of the Rib 1 external lower surface splice, between Frame (FR) 40 and FR47.
>
> DGAC France * * * issued [an AD] to expand the choice of applicable Service Bulletins (SB). [The] DGAC France AD * * * was issued to allow A300–600 operators to use Revision 04 of Airbus SB A300–57–6047, converting flight cycles/"Fatigue rating" into flight cycles (FC)/flight hours (FH).
>
> Subsequently, Airbus modification 10599 was developed to improve the corrosion behaviour of the area. This improvement allowed refining the inspection programme of the A300–600 aeroplane. For post-modification 10599 A300–600 aeroplanes, the application of the Maintenance Review Board Report (MRBR) inspection tasks was deemed sufficient for maintaining an adequate level of safety on these aeroplanes.
>
> Consequently, EASA issued AD 2008–0208 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0208_R2.pdf/AD_2008-0208R2_1*] (later revised), retaining the requirements of [a] DGAC France AD * * *, which was superseded, to require the use of Airbus SB A300–57–6047 Revision 05 for the inspections and to exclude post-modification

> 10599 A300–600 aeroplanes from the Applicability.
>
> Since EASA AD 2008–0208R1 was issued, a fleet survey and updated Fatigue and Damage Tolerance analyses have been performed in order to substantiate the second A300–600 Extended Service Goal (ESG2) exercise. The results of these analyses determined that the threshold and interval must be reduced to allow timely detection of these cracks and the accomplishment of an applicable corrective action.
>
> For the reasons described above, this [EASA] AD takes over and retains the requirements for A300 and A300–600 aeroplanes from EASA AD 2008–0208R1 (which has been revised, remaining applicable only to A310 aeroplanes) and requires accomplishment of the inspections within the new thresholds and intervals.

Required actions include repetitive detailed inspections for corrosion of the rib 1 external lower surface splice between FR40 and FR47, and repetitive fatigue inspections for cracking of the fasteners and on the surface of the forward and aft lower surface panels if necessary, and corrective actions (including application of new protective coating, removal of corrosion, and measurement of the reworked depth) if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5040.

Related Rulemaking

AD 98–21–34, Amendment 39–10842 (63 FR 55524, October 16, 1998) ("AD 98–21–34"), applies to all Model A300, A300–600, and A310 series airplanes. This NPRM proposes to apply to only certain Model A300 and A300–600 series airplanes. The actions in this proposed AD are the same as those required by AD 98–21–34, but with certain revised compliance times. Accomplishment of the initial inspection specified in this proposed AD would terminate the repetitive inspection requirements of AD 98–21–34 for the affected airplanes. Certain modified Model A300–600 series airplanes would not be subject to the inspection requirements of this AD, and would no longer be subject to the repetitive inspection requirements of AD 98–21–34.

Related Service Information Under 1 CFR Part 51

We reviewed Service Bulletin A300–57–0204, Revision 01, dated April 2, 1999; and Airbus Service Bulletin A300–57–6047, Revision 06, dated October 17, 2011. This service information describes procedures for repetitive detailed inspections for corrosion of the rib 1 external lower surface splice between FR40 and FR47, repetitive fatigue inspections for cracking of the fasteners and on the surface of the forward and aft lower surface panels if necessary, and corrective actions (including application of new protective coating, removal of corrosion, and measurement of the reworked depth) if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 29 airplanes of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $19,270, or $680 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours, for a cost of $680 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–5040; Directorate Identifier 2013–NM–192–AD.

(a) Comments Due Date

We must receive comments by May 20, 2016.

(b) Affected ADs

This AD affects AD 98–21–34, Amendment 39–10842 (63 FR 55524, October 16, 1998) ("AD 98–21–34").

(c) Applicability

This AD applies to all Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by the determination that certain existing inspection thresholds and intervals must be reduced. We are issuing this AD to detect and correct corrosion and cracking on the lower wing root joint, which could reduce the structural integrity of the airframe.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Airplanes Excluded From Requirements of This AD and AD 98–21–34

For airplanes identified in paragraph (c)(2) of this AD on which Airbus modification 10599 has been incorporated:

(1) No action is required by this AD; and

(2) As of the effective date of this AD, the actions specified in AD 98–21–34 are no longer required.

(h) Inspection and Corrective Actions

Within 60 months since the airplane's first flight, or within 60 months since accomplishment of the last inspection specified in Airbus Service Bulletin A300–57–0204 or A300–57–6047, whichever occurs later: Do a detailed inspection for corrosion of the rib 1 external lower surface splice between frame (FR)40 and FR47, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0204, Revision 01, dated April 2, 1999; or Airbus Service Bulletin A300–57–6047, Revision 06, dated October 17, 2011; as applicable. Repeat the inspection thereafter at intervals not to exceed 60 months. Accomplishment of the initial inspection required by this paragraph terminates the requirements of AD 98–21–34 for Model A300 and A300–600 series airplanes.

(i) Corrective Actions for Corrosion

If any corrosion is found during any inspection required by paragraph (h) of this AD, do the actions specified in paragraph (i)(1) and (i)(2) of this AD.

(1) Before further flight, do all applicable corrective actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0204, Revision 01, dated April 2, 1999; or Airbus Service Bulletin A300–57–6047, Revision 06, dated October 17, 2011; as applicable; except as required by paragraph (j)(1) of this AD.

(2) At the applicable time specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD, except as required by paragraph (j)(2) of this AD: Do fatigue inspections to detect cracks of the fasteners and on the surface of the forward and aft lower surface panels, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0204, Revision 01, dated April 2, 1999; or Airbus Service Bulletin A300–57–6047, Revision 06, dated October 17, 2011; as applicable. Repeat the fatigue inspections thereafter at the applicable interval specified in paragraph B.(5) of Airbus Service Bulletin A300–57–0204, Revision 01, dated April 2, 1999; or Figure A–FBGAA, Sheet 01, of Airbus Service Bulletin A300–57–6047, Revision 06, dated October 17, 2011; as applicable; except as required by paragraph (j)(2) of this AD. If any cracking is found during any fatigue inspection required by this paragraph: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(i) For Model A300 series airplanes: Do the initial inspection at the applicable time specified in paragraph B.(5) of Airbus Service Bulletin A300–57–0204, Revision 01, dated April 2, 1999.

(ii) For Model A300–600 series airplanes: Do the initial inspection at the later of the times specified in paragraphs (i)(2)(ii)(A) and (i)(2)(ii)(B) of this AD.

(A) At the applicable time specified in Figure A–FBGAA, Sheet 01, of Airbus Service Bulletin A300–57–6047, Revision 06, dated October 17, 2011.

(B) Within 500 flight cycles or 1,050 flight hours after the effective date of this AD, whichever occurs first, without exceeding the time specified in paragraph (i)(2)(ii)(A) of this AD.

(j) Exceptions to Service Bulletin Specifications

(1) Where Airbus Service Bulletin A300–57–0204, Revision 01, dated April 2, 1999; or Airbus Service Bulletin A300–57–6047, Revision 06, dated October 17, 2011; specifies to contact Airbus for appropriate corrective action, this AD requires repair before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(2) Where Airbus Service Bulletin A300–57–6047, Revision 06, dated October 17, 2011, specifies to contact Airbus for the appropriate threshold or repetitive interval, this AD requires that the compliance time be determined using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(k) Calculating Average Flight Time (AFT)

The accumulated flight hours (counted from the takeoff up to the landing) divided by the number of accumulated flight cycles is the AFT per flight cycle.

(l) Credit for Previous Actions

This paragraph provides credit for the inspections and corrective actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (l)(1) through (l)(3) of this AD.

(1) Airbus Service Bulletin A300–57–6047, Revision 02, dated April 2, 1999, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A300–57–6047, Revision 03, dated September 28, 1999, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A300–57–6047, Revision 05, dated May 27, 2008, which is not incorporated by reference in this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0230, dated September 24, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5040.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 24, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07575 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5042; Directorate Identifier 2015–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain fastener locations in the window corner surround structure are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive high frequency eddy current (HFEC) inspections for cracking in certain fastener locations in the window corner surround structure, and repair if necessary. We are proposing this AD to detect and correct fatigue cracking around certain fastener locations that could cause multiple window corner skin cracks, which could result in rapid decompression and consequent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by May 20, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5042.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5042; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6595; fax: 425–917–6590; email: *jason.deutschman@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5042; Directorate Identifier 2015–NM–140–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as WFD. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

The FAA has received a report indicating that an evaluation by the DAH has indicated that certain fastener locations in the window corner surround structure are subject to WFD. Fatigue cracking around certain fastener locations could cause multiple window corner skin cracks, which could result in rapid decompression and consequent reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1351, dated July 8, 2015. The service information describes procedures for HFEC inspections for cracking in certain fastener locations in the window corner surround structure and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information identified previously, except as discussed under "Difference Between this Proposed AD and the Service Information." For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5042.

Difference Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–53A1351, dated July 8, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 1,528 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	38 work-hours × $85 per hour = $3,230 [per inspection cycle].	$0 [per inspection cycle]	$3,230 [per inspection cycle]	$4,935,440 [per inspection cycle].

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–5042; Directorate Identifier 2015–NM–140–AD.

(a) Comments Due Date

We must receive comments by May 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain fastener locations in the window corner surround structure are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking around certain fastener locations that could cause multiple window corner skin cracks, which could result in rapid decompression and consequent reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections and Repair

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1351, dated July 8, 2015: Do an external high frequency eddy current (HFEC) inspection for cracking of the skin around the fastener locations at the upper forward and lower aft corners of each window between station (STA) 360 and STA 540, as applicable, and at the lower forward and upper aft corners of each window between STA 727 and STA 887, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1351, dated July 8, 2015. Repeat the inspection thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1351, dated July 8, 2015. If any crack is found during any inspection, repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Exception to the Service Bulletin Specifications

Although Boeing Alert Service Bulletin 737–53A1351, dated July 8, 2015, specifies to contact Boeing for repair instructions, and specifies that action as "RC" (Required for Compliance), this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6595; fax: 425–917–6590; email: *jason.deutschman@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 24, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07577 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5041; Directorate Identifier 2015–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–8 and 747–8F series airplanes. This proposed AD was prompted by a report that static strength analysis has shown that the aluminum transmission aft bearing plate assemblies have inadequate structural strength for one or more of the required load cases, including cases for drive system jam, flap skew, and structural damage tolerance. Inadequate structural strength can result in damage to the transmission aft bearing plate assemblies. This proposed AD would require removing aluminum transmission aft bearing plate assemblies from the flap track and installing titanium transmission aft bearing plate assemblies to the flap track. We are proposing this AD to prevent inadequate structural strength of transmission aft bearing plate assemblies. This condition could result in damaged transmission aft bearing plate assemblies, which could result in incorrect operation and departure of the flap from the airplane and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 20, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5041.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–

5041; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5041; Directorate Identifier 2015–NM–102–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report that static strength analysis has shown that the aluminum transmission aft bearing plate assemblies have inadequate structural strength for one or more of the required load cases, including cases for drive system jam, flap skew, and structural damage tolerance. These types of load cases can cause a flap transmission torque brake to engage, which will then cause additional loading on the transmission aft bearing plate assemblies common to that flap. This could cause damage to the transmission aft bearing plate assemblies. This condition, if not corrected, could result in transmission aft bearing plate assemblies working incorrectly or departure of the flap from the airplane, which could result in loss of controllability of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–57A2348, dated June 12, 2015. The service information describes procedures for removing the aluminum transmission aft bearing plate assembly from the flap track and installing a new titanium transmission aft bearing plate assembly to the flap track. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 11 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	114 work-hours × $85 per hour = $9,690	$48,682	$58,372	$642,092

According to the manufacturer, all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–5041; Directorate Identifier 2015–NM–102–AD.

(a) Comments Due Date

We must receive comments by May 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–8 and 747–8F series airplanes, certified in any category, as identified in Boeing Alert Service Bulletin 747–57A2348, dated June 12, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report that static strength analysis has shown that the aluminum transmission aft bearing plate assemblies have inadequate structural strength for one or more of the required load cases, including cases for drive system jam, flap skew, and structural damage tolerance. Inadequate structural strength can result in damage to the transmission aft bearing plate assemblies. We are issuing this AD to prevent inadequate structural strength of transmission aft bearing plate assemblies. This condition could result in damaged transmission aft bearing plate assemblies, which could result in incorrect operation and departure of the flap from the airplane and consequent loss of controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement

Within 48 months after the effective date of this AD: Remove aluminum transmission aft bearing plate assemblies from the flap track and install new titanium transmission aft bearing plate assemblies to the flap track, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2348, dated June 12, 2015.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(4)(i) and (h)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 24, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07578 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4123; Directorate Identifier 2016–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. This proposed AD was prompted by the fracture of the high-pressure turbine (HPT) stage 2 hub during flight, which resulted in an in-flight shutdown (IFSD), undercowl fire, and smoke in the cabin. This proposed AD would require inspecting the HPT stage 1 hub and HPT stage 2 hub, and, if necessary, their replacement with parts that are eligible for installation. We are proposing this AD to prevent failure of the HPT stage 1 or HPT stage 2 hubs, which could result in uncontained HPT blade release, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by June 6, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 860–368–3700; fax: 860–368–4600; email: *iaeinfo@iaev2500.com;* Internet: *https://www.iaeworld.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4123 or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–4123; Directorate Identifier 2016–NE–06–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report of an engine IFSD and subsequent undercowl fire on an IAE V2527–A5 turbofan engine during a revenue flight of an Airbus A320 airplane in September 2014. The subsequent investigation of this event determined that it was caused by a manufacturing defect in the HPT stage 2 hub that resulted in fracture and failure of the HPT stage 2 hub. The event involved release of a fir tree lug and two HPT stage 2 blades. IAE also identified a similar manufacturing defect on the HPT stage 1 hub. This condition, if not corrected, could result in uncontained HPT blade release, damage to the engine, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed IAE Non-Modification Service Bulletin (NMSB) No. V2500–ENG–72–0661, Revision No. 1, dated February 5, 2016. The NMSB describes procedures for inspecting the HPT stage 1 and stage 2 hubs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require inspecting the engine HPT stage 1 hub and HPT stage 2 hub, and, if necessary, their replacement with parts eligible for installation.

Costs of Compliance

We estimate that this proposed AD affects 668 engines with 947 hubs installed on airplanes of U.S. registry. Some of the 668 engines have two hubs installed. We estimate that it would take about 8 hours per hub to perform the piece-part inspection. The average labor rate is $85 per hour. We estimate that 568 hubs will require replacement. We estimate the pro-rated cost to replace an HPT stage 1 hub to be $50,271 and the pro-rated cost to replace an HPT stage 2 hub to be $40,063. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $26,298,816.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

International Aero Engines AG: Docket No. FAA–2016–4123; Directorate Identifier 2016–NE–06–AD.

(a) Comments Due Date

We must receive comments by June 6, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines AG (IAE) V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5, engines with either of the following installed:

(1) High-pressure turbine (HPT) stage 1 hub, part number (P/N) 2A5001, with a serial number (S/N) listed in Table 1, Appendix A, of IAE Non-Modification Service Bulletin (NMSB) No. V2500–ENG–72–0661, Revision 1, dated February 5, 2016; or

(2) HPT stage 2 hub, P/N 2A4802, with an S/N listed in Table 2, Appendix A, of IAE NMSB No. V2500–ENG–72–0661, Revision 1, dated February 5, 2016.

(d) Unsafe Condition

This AD was prompted by the fracture of the HPT stage 2 hub during flight, which resulted in an in-flight shutdown, undercowl fire, and smoke in the cabin. We are issuing this AD to prevent failure of the HPT stage 1 or HPT stage 2 hubs, which could result in uncontained HPT blade release, damage to the engine, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Inspect the HPT stage 1 hub, P/N 2A5001, and HPT stage 2 hub, P/N 2A4802, at the next shop visit or as follows, whichever comes first:

(i) For hubs with 0 to 7,000 CSN, before accumulating 13,000 CSN;

(ii) For hubs with 7,001 to 11,000 CSN, within 6,000 cycles from the effective date of this AD or before accumulating 15,000 CSN, whichever occurs first;

(iii) For hubs with 11,001 to 15,500 CSN, within 4,000 cycles from the effective date of this AD or before accumulating 17,000 CSN, whichever occurs first;

(iv) For hubs with 15,501 CSN or greater, within 1,500 cycles from the effective date of this AD.

(2) Use Accomplishment Instructions, paragraphs 2.A., 2.C., and 2.D., of IAE NMSB No. V2500–ENG–72–0661, Revision 1, dated February 5, 2016, to inspect the HPT stage 1 hub, P/N 2A5001.

(3) Use Accomplishment Instructions, paragraphs 2.E., 2.G., and 2H., of IAE NMSB No. V2500–ENG–72–0661, to inspect the HPT stage 2 hub, P/N 2A4802.

(4) Remove from service any HPT stage 1 hub, P/N 2A5001, or HPT stage 2 hub, P/N 2A4802, that fail the inspections required by paragraphs (e)(2) and (e)(3) of this AD, and replace with a part that is eligible for installation.

(f) Definition

For the purpose of this AD, a "shop visit" is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

(2) For service information identified in this proposed AD, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 860–368–3700; fax: 860–368–4600; email: *iaeinfo@iaev2500.com;* Internet: *https://www.iaeworld.com.*

(3) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 24, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–07579 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 30

RIN 1240–AA08

Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act

AGENCY: Office of Workers' Compensation Programs, Department of Labor.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of Labor is reopening and extending the comment period for the notice of proposed rulemaking it published on November 18, 2015 (80 FR 72296). The Department originally allowed a 60-day comment period that was scheduled to close on January 19, 2016, but on that date extended the comment period another 30 days through February 18, 2016 (81 FR 2787). This notice indicates that the comment period is being reopened as of April 5, 2016 and extended for an additional period. The comment period for the information collection requirements in the proposed rule ended on December 18, 2015, and that period is not being reopened.

DATES: The comment period for the notice of proposed rulemaking published on November 18, 2015 (80 FR 72296) and extended at 81 FR 2787 (January 19, 2016) is reopened. The Department will accept written comments on the notice of proposed rulemaking from interested parties that are submitted from April 5, 2016 through May 9, 2016.

ADDRESSES: Parties may submit comments on the regulations in the proposed rule, identified by Regulatory Information Number (RIN) 1240–AA08, by any ONE of the following methods:

Federal e-Rulemaking Portal: The Internet address to submit comments on the regulations in the proposed rule is *www.regulations.gov.* Follow the Web site instructions for submitting comments. Comments will also be available for public inspection on the Web site.

Mail or Hand Delivery: Submit written comments by mail to Rachel P. Leiton, Director, Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3321, 200 Constitution Avenue NW., Washington, DC 20210. The Department will only consider mailed comments that have been postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All comments must cite RIN 1240–AA08 that has been assigned to this rulemaking. Receipt of any comments, whether by Internet, mail or hand delivery, will not be acknowledged.

FOR FURTHER INFORMATION CONTACT: Rachel P. Leiton, Director, Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3321, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: 202–693–0081 (this is not a toll-free number).

Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In response to requests from members of the public, the Department has decided to reopen the public comment period for the notice of proposed rulemaking it published on November 18, 2015 (80 FR 72296). The Department originally allowed a 60-day comment period that was scheduled to close on January 19, 2016, but on that date extended the comment period another 30 days through February 18, 2016 (81 FR 2787). The comment period is being reopened as of April 5, 2016 and extended through May 9, 2016. The comment period for the information collection requirements in the proposed rule ended on December 18, 2015, and that period is not being reopened.

The notice of proposed rulemaking contains changes to update the regulations governing the administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.*, which was originally enacted on October 30, 2000. The initial version of EEOICPA established a compensation program (known as Part B of the Act) to provide a uniform lump-sum payment of $150,000 and medical benefits as compensation to covered employees who had sustained designated illnesses due to their exposure to radiation, beryllium or silica while in the performance of duty for DOE and certain of its vendors, contractors and subcontractors. Part B of the Act also provides for payment of compensation to certain survivors of these covered employees, and for payment of a smaller uniform lump-sum ($50,000) to individuals (who would also receive medical benefits), or their survivors, who were determined to be eligible for compensation under section 5 of the Radiation Exposure Compensation Act (RECA), 42 U.S.C. 2210 note, by the Department of Justice. Primary responsibility for the administration of Part B of the Act was assigned to DOL by Executive Order 13179 ("Providing Compensation to America's Nuclear Weapons Workers") of December 7, 2000 (65 FR 77487).

The initial version of EEOICPA also created a second program (known as Part D of the Act) that required DOE to establish a system by which DOE contractor employees (and their eligible survivors) could seek assistance from DOE in obtaining state workers' compensation benefits if a Physicians Panel determined that the employee in question had sustained a covered illness as a result of work-related exposure to a toxic substance at a DOE facility. A positive panel finding that was accepted by DOE required DOE, to the extent permitted by law, to order its contractor not to contest the claim for state workers' compensation benefits. However, Congress amended EEOICPA in Subtitle E of Title XXXI of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, 118 Stat. 1811, 2178 (October 28, 2004), by abolishing Part D of the Act and creating a new Part E (codified at 42 U.S.C. 7385s through 7385s-15) that it assigned to DOL for administration. Part E established a new system of variable federal payments for DOE contractor employees, uranium workers covered by section 5 of RECA, and eligible survivors of such employees.

The Department's proposed rule would amend certain of the existing regulations governing its administration of Parts B and E of EEOICPA to conform them to current administrative practice, based on its experience administering the Act since 2001, to bring further clarity to the regulatory description of the claims adjudication process, and to improve the administration of the Act.

Signed at Washington, DC, this 29th day of March, 2016.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2016–07488 Filed 4–4–16; 8:45 am]

BILLING CODE 4510–CR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0518; FRL–9944–50–Region 4]

Air Plan Approval; North Carolina; Regional Haze

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to North Carolina's regional haze State Implementation Plan (SIP), submitted by the North Carolina Department of Environment and Natural Resources (NC DENR) on October 31, 2014, that relies on an alternative to Best Available Retrofit Technology (BART) to satisfy BART requirements for electric generating units (EGUs) formerly subject to the Clean Air Interstate Rule (CAIR). EPA also proposes to find that final approval of this SIP revision would correct the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP on June 7, 2012, and proposes to convert EPA's June 27, 2012, limited approval to a full approval. This submittal addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the regional haze program). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

DATES: Written comments must be received on or before April 26, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0518 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached by telephone at (404) 562–9031 or via electronic mail at *Notarianni.Michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background for EPA's Proposed Action

A. Overview of the Regional Haze Rule

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (*e.g.*, sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.*, sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas (Class I areas) which impairment results from manmade air pollution." It also directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the national visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 (known as "BART-eligible" sources) procure, install, and operate BART. In the 1990 CAA Amendments, Congress amended the visibility provisions in the CAA to focus attention on the problem of regional haze.

In 1999, EPA promulgated the Regional Haze Rule, which requires states to develop and implement SIPs to ensure reasonable progress toward improving visibility in Class I areas by reducing emissions that cause or contribute to regional haze. *See* 64 FR 35713 (July 1, 1999). The Regional Haze Rule requires each state, the District of Columbia, and the Virgin Islands to each submit a regional haze SIP no later than December 17, 2007. Under 40 CFR 51.308(e), the SIP must contain emission limitations representing BART and schedules for compliance with BART for each BART-eligible source, unless the SIP demonstrates that an emissions trading program or other alternative (BART Alternative) will achieve greater reasonable progress toward natural visibility conditions than would have resulted from the installation and operation of BART at all sources subject to BART and covered by the BART Alternative. An approvable BART Alternative must meet the criteria in 40 CFR 51.308(e)(2) as described in section II.B, below.

CAA Section 169A and the Regional Haze Rule require states to establish a long-term strategy for making reasonable progress toward meeting the national goal of achieving natural visibility conditions in Class I areas. The long-term strategy is the compilation of all enforceable emission limitations, compliance schedules, and other measures as necessary for a state to meet applicable reasonable progress goals during an implementation period. For the first implementation period, the long-term strategy includes BART as well as any other controls necessary to ensure reasonable progress.

B. North Carolina's Regional Haze SIP

North Carolina submitted its regional haze SIP on December 17, 2007, the regional haze SIP submittal deadline. Fully consistent with EPA's regulations at the time, the SIP relied on CAIR to satisfy NO_X and SO_2 BART requirements for CAIR-subject EGUs in the State and to partially satisfy the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.

CAIR, promulgated in 2005, required 27 states and the District of Columbia to reduce emissions of NO_X and SO_2 that significantly contribute to, or interfere with maintenance of, the 1997 national ambient air quality standards (NAAQS) for fine particulates and for ozone in any downwind state. CAIR imposed specified emissions reduction requirements on each affected state and established an EPA-administered cap and trade program for EGUs that states could join as a means to meet these requirements.

EPA demonstrated that CAIR achieved greater reasonable progress toward the national visibility goal than BART for NO_X and SO_2 at BART-eligible EGUs in CAIR affected states, and the Agency revised the Regional Haze Rule to provide that states participating in CAIR's cap-and-trade program need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NOx. *See* 70 FR 39104 (July 6, 2005). As a result, a number of states in the CAIR region designed their regional haze SIPs to rely on CAIR as an alternative to NOx and SO_2 BART for CAIR-subject EGUs. These states also relied on CAIR as an element of a long-term strategy for achieving their reasonable progress goals.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,[1] but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR.[2] On August 8, 2011, acting on the D.C. Circuit's remand, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS.[3] *See* 76 FR 48208.

Due to CAIR's status as a temporary measure following the D.C. Circuit's 2008 ruling, EPA could not fully approve regional haze SIP revisions to the extent that they relied on CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. On these grounds, EPA finalized a limited disapproval of North Carolina's regional haze SIP on June 7, 2012, triggering the requirement for EPA to promulgate a FIP unless North Carolina submitted and EPA approved a SIP revision that corrected the deficiency. *See* 77 FR 33642. EPA finalized a limited approval of North Carolina's regional haze SIP on June 27, 2012, as meeting the remaining applicable regional haze requirements set forth in the CAA and the Regional Haze Rule. *See* 77 FR 38185.

II. Analysis of North Carolina's Regional Haze SIP Submittal

On October 31, 2014, NC DENR submitted a revision to North Carolina's regional haze SIP to correct the deficiencies identified in the June 7, 2012, limited disapproval by replacing reliance on CAIR with reliance on a BART Alternative to satisfy NOx and SO_2 BART requirements for EGUs formerly subject to CAIR. EPA is proposing to approve this SIP revision because EPA is proposing to determine that the BART Alternative contained therein meets the requirements of 40 CFR 51.308(e)(2) and that final approval of this SIP revision would correct the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP.

A. North Carolina's BART Alternative

North Carolina's October 31, 2014, SIP revision relies on the State's Clean Smokestacks Act (CSA) as a BART Alternative for NO_X and SO_2 at the BART-eligible EGUs formerly covered by CAIR. North Carolina enacted the

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[1] *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[2] *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008).

[3] Although a number of parties challenged the legality of CSAPR and the D.C. Circuit initially vacated and remanded CSAPR to EPA in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), the United States Supreme Court reversed the D.C. Circuit's decision on April 29, 2014, and remanded the case to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects and CSAPR is now in effect. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015).

CSA in 2002 to improve air quality by imposing firm caps on the total annual emissions of NOx and SO_2 from 42 coal-fired EGUs at the 14 power plants identified in Table 1, below, operated by Duke Energy Progress, LLC (Progress Energy) and Duke Energy Carolinas, LLC (Duke Energy).[4] The CSA requires Duke Energy EGUs and Progress Energy EGUs to reduce SO_2 emissions to 150,000 tons and 100,000 tons, respectively, by the end of 2009 and to further reduce SO_2 emissions to 80,000 tons and 50,000 tons, respectively, by the end of 2013. The CSA limits NOx emissions from Duke Energy EGUs and Progress Energy EGUs to 35,000 tons and 25,000 tons, respectively, beginning on January 1, 2007, and tightens the emissions cap on Duke Energy EGUs to 31,000 tons as of January 1, 2009. Collectively, the caps require these utilities to: (1) Reduce actual emissions of NO_X from 245,000 tons in 1998 to 56,000 tons by 2009 (a 77 percent reduction), and (2) reduce actual SO_2 emissions from 489,000 tons in 1998 to 250,000 tons by 2009 (a 49 percent reduction) and to 130,000 tons by 2013 (a 73 percent reduction).

Duke Energy and Progress Energy must meet the CSA emission caps through actual reductions. The CSA does not allow these units to buy or trade emissions credits (also referred to as "allowances") under CSAPR to meet these caps even though each utility may decide how to allocate emission reductions across its affected units.[5] Furthermore, any CSAPR allowances in excess of the CSA emissions caps must be surrendered to the North Carolina State Treasurer thereby preventing the transfer of these allowances to EGUs located in other states within the CSAPR trading program.[6] EPA approved the CSA emissions caps into North Carolina's SIP on September 26, 2011. *See* 76 FR 59250.

Progress Energy and Duke Energy have shut down 22 of the coal-fired EGUs subject to the CSA and have installed scrubbers to control SO_2 emissions and Selective Catalytic Reduction (SCR) or Selective Non-catalytic Reduction (SNCR) to control NO_X emissions on all of the currently operating coal-fired EGUs subject to the CSA in order to meet the emissions caps. Table 1, below, identifies the retired units and the NO_X and SO_2 emissions controls on the operating units.

TABLE 1—EGUS SUBJECT TO THE CSA

Status	Facility	Parent company *	Unit ID	BART-eligible	NO_X Control	SO_2 Control
Operating [7]	Allen	Duke	1–5		SNCR	FGD
	Asheville	Progress	1–2	Y	SCR	FGD
	Buck	Duke	5–9		SNCR	**
	Belews Creek	Duke	1–2	Y	SCR	FGD
	Cliffside	Duke	5	Y	SCR	FGD
			6		SCR	FGD
	Marshall	Duke	1–2, 4	Y	SNCR	FGD
			3		SCR	FGD
	Mayo	Progress	1		SCR	FGD
	Roxboro	Progress	1–3	Y	SCR	FGD
			4		SCR	FGD
Retired	Cape Fear	Progress	5–6			
	Cliffside	Duke	4			
	Dan River	Duke	1–3			
	Lee	Progress	1–3			
	Riverbend	Duke	7–10			
	Sutton	Progress	3	Y.		
	Weatherspoon	Progress	1–3			

* Duke Energy and Progress Energy merged on July 2, 2012.
** Units converted from coal to natural gas.

B. EPA's Evaluation of North Carolina's BART Alternative

The Regional Haze Rule requires that a SIP revision establishing a BART Alternative include the three elements listed below, and EPA has evaluated North Carolina's BART Alternative with respect to each of these elements.

- A demonstration that the emissions trading program or other alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the state and covered by the alternative program. *See* 40 CFR 51.308(e)(2)(i).
- A requirement that all necessary emissions reductions take place during the period of the first long-term strategy for regional haze. *See* 40 CFR 51.308(e)(2)(iii).
- A demonstration that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. *See* 40 CFR 51.308(e)(2)(iv).

EPA seeks comments on its proposed findings under each of these elements, which are described in detail below.

1. Demonstration That the BART Alternative Will Achieve Greater Reasonable Progress Than BART

Pursuant to 40 CFR 51.308(e)(2)(i), the state must demonstrate that the BART Alternative will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the state and covered by the alternative program. This demonstration must be based on the five criteria addressed below.

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[4] More information on the CSA regulation can be found at *http://daq.state.nc.us/news/leg/cleanstacks.shtml.* At the time that the CSA was enacted, the Progress Energy units were owned by Progress Energy Carolinas, Inc. and the Duke Energy units were owned by Duke Power.

[5] The CSA also prohibited the purchase and trade of CAIR credits to meet the CSA caps when CAIR was in effect. Allowances cannot be traded between the units owned by Progress Energy and those owned by Duke Energy.

[6] In 2013, Duke Energy reported an excess of 58,961 CAIR SO_2 allowances and 1,987 CAIR NOx allowances above CSA emissions limits and Progress Energy reported 78,050 excess CAIR SO_2 allowances. All of these excess allowances have been verified and transferred to the State.

[7] This category includes EGUs that were converted from coal to natural gas.

a. List of All BART-Eligible Sources Within the State

Pursuant to 40 CFR 51.308(e)(2)(i)(A), the SIP submission must include a list of all BART-eligible sources within the state. In its December 31, 2007, regional haze SIP submittal, North Carolina identified all 17 BART-eligible sources located in the State. *See* 77 FR 11858, 11873–11874 (February 28, 2012). Of these 17 sources, six were subject to CAIR and 11 were non-EGUs. North Carolina determined that one non-EGU source was subject to BART, nine were exempt from BART, and one was shut down. *See* 77 FR 11873, 11874 (February 28, 2012). The State relied on CAIR to satisfy the NO_X and SO_2 BART requirements for the 13 BART-eligible EGUs at the six CAIR-subject sources. EPA approved the State's identification of BART-eligible and BART-subject sources and the BART determination for the one BART-subject source not subject to CAIR (Blue Ridge Paper). *See* 77 FR 38185 (June 27, 2012). EPA issued a limited disapproval of the State's SIP submittal based on its reliance on CAIR to satisfy NO_X and SO_2 BART requirements for certain sources and to satisfy the long-term strategy requirements of its EGUs. *See* 77 FR 33642 (June 7, 2012). In its October 31, 2014, SIP revision, the State lists the 13 BART-eligible EGUs impacted by EPA's limited disapproval. Because the State identified all BART-eligible units in its regional haze SIP and identified all outstanding BART-eligible units in its BART Alternative SIP revision, EPA proposes to find that the State has met the requirement of 40 CFR 51.308(e)(2)(i)(A).

b. List of All BART-Eligible Sources and All Bart Source Categories Covered by the Alternative Program

Pursuant to 40 CFR 51.308(e)(2)(i)(B), the SIP submission must include a list of all BART-eligible sources and all BART source categories covered by the BART Alternative, and each BART-eligible source in the state must be subject to the requirements of the alternative program or have a federally enforceable emission limitation determined by the state and approved by EPA as meeting BART. As previously mentioned, EPA approved the BART determinations for all BART-eligible units in North Carolina with the exception of NO_X and SO_2 BART for the 13 BART-eligible EGUs formerly covered by CAIR, and these 13 units are subject to the BART Alternative. Therefore, EPA proposes to find that the SIP revision satisfies 40 CFR 51.308(e)(2)(i)(B).

c. Analysis of BART and Associated Emissions Reductions

Pursuant to 40 CFR 51.308(e)(2)(i)(C), the SIP submission must include an analysis of the best system of continuous emissions control technology available and associated emission reductions achievable for each source subject to BART and covered by the alternative program. This analysis must be conducted by making a BART determination for each source subject to BART and covered by the alternative program unless the alternative has been designed to meet a requirement other than BART. In this latter case, the State may determine the best system of continuous emissions control technology and associated emission reductions for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate. North Carolina opted to use the simplified approach because North Carolina created the CSA to meet requirements other than BART.

In using the simplified approach for EGUs, states may estimate the emissions reductions associated with BART based on an analysis of what BART is likely to be for similar types of sources within the source category using the presumptions for EGUs in the *Guidelines for BART Determinations under the Regional Haze Rule* located at 40 CFR part 51, Appendix Y (BART Guidelines). The BART Guidelines contain presumptive NO_X and SO_2 emissions limits for EGUs greater than 200 megawatt (MW) capacity at plants with a total generating capacity in excess of 750 MW. When a state is estimating the emissions reductions achievable through BART at the BART-eligible EGUs covered by the BART Alternative, it should assume that these EGUs would control at the presumptive level unless the state determines that such presumptions are not appropriate.

i. SO_2 Emissions Reductions

The BART Guidelines specify the presumptive SO_2 BART limit at 95 percent control or 0.15 pounds per million British Thermal Units (lbs/MMBtu) for uncontrolled EGUs greater than 200 MW at 750 MW power plants unless an alternative control level is justified. *See* 40 CFR part 51, App. Y, IV.E.4. North Carolina used this presumptive limit to calculate SO_2 BART emissions by multiplying the limit by each BART-eligible EGU's 2002 heat input in MMBtu. When compared to actual 2002 SO_2 emissions, the State calculated that BART would reduce SO_2 emissions by 274,668 tons. *See* Table 3 in North Carolina's October 31, 2014, submittal.

ii. NO_X Emissions Reductions

All of the BART-eligible EGUs subject to the CSA burn bituminous coal and have either wall-fired or tangential-fired boilers. *See* Table 1 of the State's October 31, 2014, submittal. The presumptive NO_X emission limits for these EGUs are 0.39 and 0.28 lb/MMbtu for wall-fired and tangential-fired boilers, respectively, unless an alternative control level is justified. *See* 40 CFR part 51, App. Y, IV.E.5. North Carolina used these presumptive limits to calculate NO_X BART emissions by multiplying the corresponding limits by each BART-eligible EGU's 2002 heat input in MMBtu. When compared to actual 2002 NO_X emissions, the State calculated that BART would reduce NO_X emissions by 19,364 tons. *See* Table 8 in North Carolina's October 31, 2014, submittal.

d. Analysis of Emissions Reductions Associated With the BART Alternative

Pursuant to 40 CFR 51.308(e)(2)(i)(D), the SIP submission must include an analysis of the projected emissions reductions achievable through the BART Alternative. North Carolina projected these reductions using four different methods: (1) CSA emissions caps; (2) 2018 emissions projected by the Visibility Improvement—State and Tribal Association of the Southeast (VISTAS)[8] and presented in North Carolina's December 17, 2007, regional haze SIP submission; (3) 2018 emissions projected by EPA's Integrated Planning Model (IPM); and (4) 2018 emissions projected by Duke Energy after the merger with Progress Energy. North Carolina also evaluated actual emissions reductions from the CSA units by comparing 2009, 2010, 2011, 2012, and 2013 emissions to 2002 levels. Table 2 shows the emissions reductions associated with the BART Alternative using the CSA caps and 2018 projections identified above, and Tables 3 and 4 show the reductions using actual emissions from 2009–2015.

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[8] VISTAS is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

3 and 4 show the reductions using actual emissions from 2009–2015.

TABLE 2—BART ALTERNATIVE EMISSIONS REDUCTIONS (TONS) FROM 2002 BASELINE USING CSA CAPS AND 2018 PROJECTIONS

	Pollutant	2002 Baseline	CSA Cap	2018 VISTAS	2018 IPM	2018 Duke
Emissions	$\mathrm{SO_2}$	467,321	130,000	89,343	24,732	23,901
Reductions from Baseline			337,321	377,978	442,589	443,420
Emissions	$\mathrm{NO_X}$	142,879	56,000	42,133	22,792	22,414
Reductions from Baseline			86,879	100,746	120,087	120,465

TABLE 3—BART ALTERNATIVE EMISSIONS REDUCTIONS FROM 2002 BASELINE USING ACTUAL EMISSIONS (TONS)—$\mathrm{SO_2}$

	2002 Baseline	2009 Actuals	2010 Actuals	2011 Actuals	2012 Actuals	2013 Actuals
Emissions	467,321	110,818	116,529	73,457	53,458	42,080
Reductions from Baseline		356,503	350,792	393,864	413,863	425,241

TABLE 4—BART ALTERNATIVE EMISSIONS REDUCTIONS FROM 2002 BASELINE USING ACTUAL EMISSIONS (TONS)—$\mathrm{NO_X}$

	2002 Baseline	2009 Actuals	2010 Actuals	2011 Actuals	2012 Actuals	2013 Actuals
Emissions	142,879	37,829	47,373	39,361	42,147	40,410
Reductions from Baseline		105,050	95,506	103,518	100,732	102,469

i. CSA Caps

Under the CSA, Duke Energy EGUs and Progress Energy EGUs were required to reduce $\mathrm{SO_2}$ emissions to 150,000 tons and 100,000 tons, respectively, by the end of 2009 and to further reduce $\mathrm{SO_2}$ emissions to 80,000 tons and 50,000 tons, respectively, by the end of 2013. Using the 2013 emissions caps, the BART Alternative would reduce $\mathrm{SO_2}$ emissions by 337,321 tons from 2002 levels.

The CSA limited $\mathrm{NO_X}$ emissions from Duke Energy EGUs and Progress Energy EGUs to 35,000 tons and 25,000 tons, respectively, beginning on January 1, 2007, and tightened the emissions cap on Duke Energy EGUs to 31,000 tons as of January 1, 2009. Using the 2009 emissions caps, the BART Alternative would reduce $\mathrm{NO_X}$ emissions by 86,879 tons from 2002 levels.

ii. 2018 Projections

VISTAS developed 2018 emissions projections for the states in the VISTAS region to use when preparing the states' regional haze SIP submissions. VISTAS accounted for the CSA emissions caps and other control programs, including CAIR, in its 2018 modeling and projected total $\mathrm{NO_X}$ and $\mathrm{SO_2}$ emissions from North Carolina's EGUs at 42,133 tons and 89,343 tons, respectively. *See* 77 FR 11866 (February 28, 2012). North Carolina compared these 2018 VISTAS emissions projections for the CSA units with 2002 actual emissions and estimated that $\mathrm{NO_X}$ and $\mathrm{SO_2}$ emissions from these units would decrease by 100,746 tons and 377,978 tons, respectively. The projected $\mathrm{NO_X}$ and $\mathrm{SO_2}$ emissions reductions from only the BART-eligible sources in the CSA would be 69,485 tons and 276,998 tons, respectively.

North Carolina also included EPA IPM modeling year 2018 $\mathrm{NO_X}$ and $\mathrm{SO_2}$ emissions estimates for the CSA EGUs. The IPM predicted that these units would emit approximately 22,792 tons of $\mathrm{NO_X}$emissions in 2018, resulting in a projected reduction of 120,087 tons when compared with 2002 actual emissions. The IPM also predicted 24,732 tons of $\mathrm{SO_2}$ emissions from these units in 2018, resulting in a projected reduction of 442,589 tons compared to 2002 actual emissions. These predictions are well below VISTAS' 2018 projections and the CSA emissions caps.

Following the merger with Progress Energy, Duke Energy projected 2018 emissions for its EGUs in North Carolina due to the significant shift from coal to natural gas and the retirement of several EGUs in the State. These estimates were prepared by Duke Energy based on its economic modeling, and they differ only slightly from the IPM forecast. The primary difference between the Duke Energy and IPM estimates is that EPA assumed in the IPM that the Allen facility's coal-fired EGUs would be shut down by 2018.[9] Duke Energy projected that the CSA units would emit approximately 22,414 tons of $\mathrm{NO_X}$ and 23,901 tons of $\mathrm{SO_2}$ in 2018, a reduction of approximately 120,465 and 443,420 tons of $\mathrm{NO_X}$ and $\mathrm{SO_2}$, respectively, from 2002 levels, respectively.

iii. Actual Emissions Reductions

North Carolina analyzed actual emissions reductions achieved with the CSA for each year from 2009 to 2013 using emissions reported to EPA's Clean Air Markets Division. North Carolina started with 2009 because this is the year when Duke Energy and Progress Energy were required to comply with the CSA's first $\mathrm{SO_2}$ cap and the final $\mathrm{NO_X}$ cap. Emissions of $\mathrm{SO_2}$ steadily decreased from 116,529 tons in 2010 to 42,080 tons in 2013. Actual $\mathrm{NO_X}$ emissions ranged from 47,373 tons in 2010 to 40,410 tons in 2013. *See* Tables 6 and 11 in North Carolina's October 31, 2014, submittal for actual emissions by CSA facility.

e. Determination That the BART Alternative Achieves Greater Reasonable Progress Than BART

Pursuant to 40 CFR 51.308(e)(2)(i)(E), the state must provide a determination that the alternative achieves greater reasonable progress than BART under 40 CFR 51.308(e)(3) or otherwise based on the clear weight of evidence. 40 CFR

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[9] Duke Energy must retire Allen Units 1 and 2 by December 31, 2024, pursuant to a consent decree entered by the United States District Court for the Middle District of North Carolina on October 20, 2015. Consent Decree, *United States, et al.* v. *Duke Energy Corporation,* Civil Case No. 1:00–cv–1262 (M.D.N.C. October 20, 2015).

51.308(e)(3) provides two different tests for determining whether the alternative achieves greater reasonable progress than BART. Under the first test, if the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, however, then the state must use the second test and conduct dispersion modeling to determine differences in visibility between BART and the alternative program for each impacted Class I area, for the worst and best 20 percent of days. *See* 40 CFR 51.308(e)(3). The modeling would demonstrate "greater reasonable progress" if: (1) Visibility does not decline in any Class I area, and (2) there is an overall improvement in visibility, determined by comparing the average differences between BART and the alternative over all affected Class I areas. North Carolina did not provide dispersion modeling because it believes that greater reasonable progress can be shown through an emissions reduction analysis under the first 40 CFR 51.308(e)(3) test and/or through a weight-of-evidence analysis based on the types of controls installed on the BART-eligible CSA units, the reductions in visibility impairing pollutants associated with the CSA, and the uniform nature of these reductions across all EGUs subject to the CSA.

EPA proposes to determine that the CSA achieves greater reasonable progress than would be achieved through the installation and operation of BART at the BART-eligible EGUs covered by the CSA based on the following weight of evidence.

First, BART would result in controls for NO_X and SO_2 only at the 13 BART-eligible EGUs, whereas the BART Alternative applies to 42 EGUs. Of these 42 EGUs, 17 have retired, five have converted from coal to natural gas, and the remaining 20 coal-fired EGUs in operation are controlled for NO_X and SO_2.

Second, the 20 operating coal-fired EGUs in the BART Alternative have installed emissions controls to meet the CSA that are, with the exception of NO_X control at Allen Units 1–5 and Marshall Units 1, 2, and 4, the most stringent controls available for SO_2 and NO_X. All of the CSA EGUs use flue gas desulphurization (*i.e.*, scrubbers) to remove SO_2. SO_2 controls are of particular importance because, as North Carolina demonstrated in its regional haze SIP, sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the VISTAS region and in states neighboring this region.[10] *See* 77 FR 11867, 11877 (February 28, 2012). Thus, North Carolina concluded that reducing SO_2 emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for the North Carolina Class I areas and the Class I areas that the State's sources impact. *See* 77 FR 11868 (February 28, 2012).

Regarding NO_X, all of the CSA-subject EGUs in operation are using SCR for post-combustion NO_X control, with the exception of Allen Units 1–5 (not BART-eligible) and Marshall Units 1, 2, and 4 (BART-eligible) that use SNCR. Although SCR is the most stringent NO_X control technology available for EGU retrofits, it is unlikely that a BART determination would result in the installation of SCR at Marshall Units 1, 2, and 4 given the EGUs' NO_X emissions, the distance from Class I areas, the cost of replacing SNCR with SCR, and the incremental visibility improvement associated with the switch from SNCR to SCR. As discussed in North Carolina's 2007 regional haze SIP submittal, nitrates are a relatively small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the inland Class I areas in VISTAS, which include all of the North Carolina Class I areas except for the Swanquarter National Wilderness Area. Therefore, the visibility benefits of reducing NO_X emissions at these Class I areas are small. *See* 77 FR 11868 (February 28, 2012).

Third, the emissions reductions under the BART Alternative are greater than those that would result from the installation and operation of BART at the BART-eligible EGUs covered by the CSA under a variety of scenarios.[11] As discussed in section II.B.1.c, above, North Carolina compared CSA emissions to BART emissions using the CSA caps, 2018 emissions projections prepared by VISTAS, IPM, and Duke Energy, and actual NO_X and SO_2 emissions. Only the emission reductions required by the CSA cap are federally enforceable by virtue of being included in North Carolina's SIP. North Carolina's calculations of emission reductions relative to the various projections provide additional information and support for its assertion that the BART Alternative achieves greater reasonable progress than BART. Tables 5 through 7, below, identify the additional emissions reductions achieved through the BART Alternative.

TABLE 5—BART ALTERNATIVE EMISSIONS REDUCTIONS BEYOND BART USING CSA CAPS AND 2018 PROJECTIONS (TONS)

	Pollutant	BART	CSA cap	2018 VISTAS	2018 IPM	2018 Duke
Reductions from 2002 Baseline.	SO_2	274,668	337,321	377,978	442,589	443,420
Reductions beyond BART			62,653	103,310	167,921	168,752
Reductions from 2002 Baseline.	NO_X	19,364	86,879	100,746	120,087	120,465
Reductions beyond BART			67,515	81,382	100,723	101,101

TABLE 6—BART ALTERNATIVE EMISSIONS REDUCTIONS BEYOND BART USING ACTUAL EMISSIONS (TONS)—SO_2

	BART	2009 Actuals	2010 Actuals	2011 Actuals	2012 Actuals	2013 Actuals
Reductions from 2002 Baseline	274,668	356,503	350,791	393,864	413,862	425,241
Reductions beyond BART		81,835	76,123	119,196	139,194	150,573

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[10] The VISTAS region includes North Carolina and the two states, Virginia and Tennessee, that North Carolina identified as having a Class I area potentially impacted by its sources.

[11] As discussed above, North Carolina used EPA's presumptive limits for NO_X and SO_2 as the BART benchmark.

TABLE 7—BART ALTERNATIVE EMISSIONS REDUCTIONS BEYOND BART USING ACTUAL EMISSIONS (TONS)— NO_X

	BART	2009 Actuals	2010 Actuals	2011 Actuals	2012 Actuals	2013 Actuals
Reductions from 2002 Baseline	19,364	105,049	95,506	103,518	100,732	102,468
Reductions beyond BART		85,685	76,142	84,154	81,368	83,104

Compared with BART, North Carolina's current CSA caps achieve an additional SO_2 reduction of 62,653 tons and an additional NO_X reduction of 67,515 tons relative to the 2002 baseline. Table 5 also shows that, depending on the origin of the 2018 projections, the BART Alternative results in an additional SO_2 reduction of 103,310 to 168,752 tons and an additional NO_X reduction of 81,382 to 101,101 tons beyond BART. The comparison of actual emissions under the BART Alternative to estimated BART emissions in Tables 6 and 7 shows that, between 2009 and 2013, the CSA achieved 76,123 to 150,573 tons of additional SO_2 reductions and 76,142 to 84,154 tons of additional NO_X reductions beyond BART. Regardless of the reduction scenario, the BART Alternative results in significantly lower NO_X and SO_2 emissions when compared to BART.

Fourth, the NO_X and SO_2 emissions controls needed to comply with CSA requirements began operating before any controls would begin operation under BART. BART must be installed and operated as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169A(g)(4); 40 CFR 51.308(e)(1)(iv). The CSA, enacted in 2002, required compliance with the initial emissions caps for SO_2 in 2007 and NO_X in 2009, and therefore resulted in emissions reductions before EPA issued a limited approval of North Carolina's regional haze SIP on June 27, 2012. *See* 77 FR 38185. Even if EPA had approved source-specific BART determinations for the CAIR-subject units in North Carolina at that time, the BART installation and operation deadline would have been set after compliance with the CSA began.

Lastly, although the CSA does allow for limited emissions shifting, there is no indication that implementation of the CSA would result in any "hot spots," as compared to BART. The shifting of emissions under the CSA is limited by the prohibition on emissions credit trading between the EGUs owned by Progress Energy and those owned by Duke Energy before the 2012 merger, as mentioned above. Additionally, the 2009–2013 SO_2 and NO_X emissions data summarized in Tables 6 and 11, respectively, of North Carolina's submittal indicate that emissions have not shifted to any significant degree between the EGUs subject to the CSA during this time period. Emissions reductions were taking place at each EGU facility and not isolated to any one facility or group of facilities. To the extent that any shifting might occur in the future, all of the operating Progress Energy units subject to the CSA operate with the most stringent NO_X and SO_2 control equipment, and all of the Duke Energy units subject to the CSA operate with the most stringent NO_X and SO_2 controls with the exception of Allen, Marshall, and Buck which operate SNCR. Of the SNCR units, only Marshall is BART-eligible. Even assuming that a BART analysis would result in a requirement to install SCR at Marshall, any shifting of emissions to Marshall would be restricted by its available capacity. Furthermore, any incremental decrease in NO_X emissions if the State were to require SCR at Marshall would not be expected to have a significant impact on visibility at Class I areas due, in part, to the fact that nitrates are a relatively small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the Class I areas in closest proximity to Marshall.

Based on the evidence provided above, EPA proposes to find that the BART Alternative achieves greater reasonable progress than BART and thus satisfies the requirements of 40 CFR 51.308(e)(2)(i)(E).

2. Requirement That Emissions Reductions Occur During the First Implementation Period

Pursuant to 40 CFR 51.308(e)(2)(iii), the state must ensure that all necessary emission reductions take place during the period of the first long-term strategy for regional haze (*i.e.,* by December 31, 2018). The Regional Haze Rule further provides that, to meet this requirement, the state must provide a detailed description of the alternative measure, including schedules for implementation, the emission reductions required by the program, all necessary administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement. *Id.* EPA proposes to find that the BART Alternative meets this requirement because the State has fully described the CSA, the CSA prescribes emissions reductions through the use of emissions caps, the emissions caps are in effect and incorporated into North Carolina's SIP, and all CSA-subject EGUs are required to meet the accounting and monitoring requirements of CSAPR.[12] Furthermore, all CSA-related permitting and construction activities have been completed to meet the CSA emissions caps. EPA therefore proposes to find that North Carolina has satisfied the requirements of 40 CFR 51.308(e)(2)(iii).

3. Demonstration That Emissions Reductions Are Surplus

Pursuant to 40 CFR 51.308(e)(2)(iv), the SIP must demonstrate that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. The baseline date for regional haze SIPs is 2002, and the first NO_X and SO_2 CSA emissions caps were not effective until 2007 and 2009, respectively. *See* 64 FR 35742. Therefore, EPA proposes to find that the reductions associated with the CSA are surplus in accordance with 40 CFR 51.308(e)(2)(iv).

B. Reasonable Progress Evaluation

EPA finalized a limited disapproval of North Carolina's regional haze SIP based on its reliance on CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. *See* 77 FR 33653. In that action, EPA also finalized limited disapprovals of a number of other states' regional haze SIPs that relied on CAIR to satisfy these requirements and finalized Federal Implementation Plans (FIPs) that substituted reliance on CSAPR for reliance on CAIR for several states. *Id.* However, North Carolina's 2014 regional haze SIP submission relies on the CSA, rather than CSAPR, to correct the deficiencies in its regional haze SIP. EPA therefore must evaluate whether inclusion of the CSA in lieu of CAIR in the state's long-term strategy is sufficient to ensure reasonable progress.

As discussed in section II.B.1.e, sulfates are the major contributor to visibility impairment at Class I areas in the VISTAS region. Based on its conclusion that SO_2 reductions would result in the greatest visibility improvements, North Carolina's 2007 regional haze SIP submission focused its reasonable progress control analysis on emission units that fall within the SO_2 area of influence of any Class I area, as modeled by VISTAS, and have a one percent or greater contribution to the sulfate visibility impairment in at least one Class I area. *See* 77 FR 11869. Sixteen EGUs subject to the CSA and formerly subject to CAIR met North Carolina's reasonable process screening criteria. The State subsequently concluded in its regional haze SIP submission that no additional controls beyond CAIR and the CSA were reasonable for these units during the first implementation period. *See* 77 FR 11870, 11872. North Carolina's long-term strategy relied, in part, on this conclusion.

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[12] *See* 76 FR 48208 (August 8, 2011).

Ten of the 16 aforementioned units have shut down or converted to natural gas. The remaining coal-fired units have each installed FGD to comply with the CSA. Given North Carolina's focus on reducing SO_2 emissions to achieve reasonable progress and the fact that coal-fired EGUs remaining in operation are already subject to the most stringent SO_2 controls available, EPA proposes to find that no additional controls are necessary for these units to achieve reasonable progress during the first implementation period. This proposed finding and the proposed finding that North Carolina's BART Alternative meets the requirements of the Regional Haze Rule form the basis for EPA's proposal to convert EPA's limited disapproval of the State's regional haze SIP to a full approval.

III. Proposed Action

EPA is proposing to find that North Carolina's regional haze SIP revision meets the applicable requirements of the CAA and Regional Haze Rule, including the requirement that the BART Alternative achieve greater reasonable progress than would be achieved through the installation and operation of BART. EPA also proposes to find that final approval of this SIP revision would correct the deficiencies that led to EPA's limited disapproval of the State's regional haze SIP on June 7, 2012, and proposes to convert the EPA's June 27, 2012, limited approval to a full approval. These proposed actions, if finalized, would eliminate the need for EPA to issue a FIP to remedy the deficiencies in North Carolina's December 17, 2007, SIP submission.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, these proposed actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon mo NO_X ide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 25, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–07670 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0696; FRL–9944–54–Region 4]

Air Plan Approval; South Carolina; Transportation Conformity Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control, on October 13, 2015. This revision consists of transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect of this approval is to update the transportation conformity criteria and procedures in the South Carolina SIP to reorganize previous exhibits into a single Memorandum of Agreement document as well as to update signatories to add the newly established Lowcountry Area Transportation Study to the list of Metropolitan Planning Organizations, created to represent a new urbanized area designated as a result of the 2010 Census. This proposed action is being taken pursuant to the Clean Air Act.

DATES: Written comments must be received on or before May 5, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0696 at *http://*

www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler of the Air Regulatory Management Section at the Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is 404–562–9992. She can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: March 25, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–07816 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List Island Marble Butterfly, San Bernardino Flying Squirrel, Spotless Crake, and Sprague's Pipit as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to list the island marble butterfly, the San Bernardino flying squirrel, the American Samoa population of the spotless crake, and the Sprague's pipit as endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the island marble butterfly as an endangered or threatened species is warranted. Currently, however, listing the island marble butterfly is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the island marble butterfly to our candidate species list. We will develop a proposed rule to list the island marble butterfly as our priorities allow. After review of the best available scientific and commercial information, we find that listing the San Bernardino flying squirrel, the American Samoa population of the spotless crake, and the Sprague's pipit is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the stressors to the San Bernardino flying squirrel, the American Samoa population of the spotless crake, the Sprague's pipit, or their habitats at any time.

DATES: The findings announced in this document were made on April 5, 2016.

ADDRESSES: These findings are available on the Internet at *http://www.regulations.gov* at the following docket numbers:

Species	Docket No.
Island marble butterfly	FWS–R1–ES–2014–0025.
San Bernardino flying squirrel	FWS–R8–ES–2016–0046.
American Samoa population of the spotless crake	FWS–HQ–ES–2016–0048.
Sprague's pipit	FWS–R6–ES–2009–0081.

Supporting information used in preparing these findings is available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning these findings to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Island marble butterfly	Eric V. Rickerson, State Supervisor, Washington Fish and Wildlife Office, 360–753–9440; *eric_rickerson@fws.gov.*
San Bernardino flying squirrel	Mendel Stewart, Field Supervisor, Carlsbad Fish and Wildlife Office, 760–731–9440; *mendel_stewart@fws.gov.*
American Samoa population of the Spotless crake.	Mary Abrams, Project Leader, Pacific Islands Fish and Wildlife Office, 808–792–9400; *mary_abrams@fws.gov.*

Species	Contact information
Sprague's pipit	Kevin Shelley, State Supervisor, North Dakota Ecological Services Field Office, 701–250–4402; *kevin_shelley@fws.gov.*

If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information indicating that listing an animal or plant species may be warranted, we make a finding within 12 months of the date of receipt of the petition ("12-month finding"). In this finding, we determine whether listing the island marble butterfly, the San Bernardino flying squirrel, the American Samoa population of the spotless crake, and the Sprague's pipit is: (1) Not warranted; (2) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants (warranted but precluded). Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We summarize below the information on which we based our evaluation of the five factors provided in section 4(a)(1) of the Act in determining whether the island marble butterfly, the San Bernardino flying squirrel, the American Samoa population of the spotless crake, and the Sprague's pipit are endangered species or threatened species. More detailed information about these species is presented in the species-specific assessment forms found on *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**). In considering what stressors under the five factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat. In that case, we determine if that stressor rises to the level of a threat, meaning that it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely affected could suffice. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these stressors are operative threats that act on the species to the point that the species meets the definition of an endangered species or a threatened species under the Act.

In making our 12-month findings, we considered and evaluated the best available scientific and commercial information.

Island Marble Butterfly (*Euchloe ausonides insulanus*)

Previous Federal Actions

On December 11, 2002, we received a petition dated December 10, 2002, from the Xerces Society for Invertebrate Conservation (Xerces), Center for Biological Diversity, Friends of the San Juans, and Northwest Ecosystem Alliance, requesting that we emergency list the island marble butterfly as an endangered species, and that we designate critical habitat concurrently with the listing. The petition clearly identified itself as such and included the requisite identification information from the petitioner, required at 50 CFR 424.14(a). Because the Act does not provide for petitions to emergency list species, we treat emergency listing petitions as petitions to list the species. On February 13, 2006, we published a 90-day finding in the **Federal Register** (71 FR 7497) concluding that the petition presented substantial scientific information indicating that listing the island marble butterfly may be warranted. On November 14, 2006, we published a notice of 12-month petition finding, concluding that the island marble butterfly did not warrant listing (71 FR 66292). Please see that 12-month finding for a complete summary of all previous Federal actions for this subspecies.

On August 24, 2012, we received a second petition from Xerces dated August 22, 2012, requesting that we emergency list the island marble butterfly as an endangered species and that we designate critical habitat concurrently with the listing. The petition clearly identified itself as such and included the requisite identification information from the petitioner, required at 50 CFR 424.14(a). Included in the petition was supporting information regarding the subspecies' taxonomy, ecology, historical and current distribution, current status, and what the petitioner identified as actual and potential causes of decline. We acknowledged the receipt of the petition in a letter to Xerces, dated September 27, 2012. In that letter we also stated that we would, to the maximum extent practicable, issue a finding within 90 days stating whether the petition presented substantial information indicating that listing may be warranted.

On March 6, 2013, we received a notice of intent to sue from Xerces for failure to complete the finding on the petition within 90 days. On January 28, 2014, we entered into a settlement agreement with Xerces stipulating that we would complete the 90-day finding before September 30, 2014. We published our 90-day finding in the **Federal Register** on August 19, 2014 (79 FR 49045). In that finding, we concluded that the petition presented substantial scientific information indicating that listing the island marble butterfly may be warranted. The settlement agreement did not specifically stipulate a deadline for a subsequent 12-month finding.

We received a notice of intent to sue from Xerces dated September 5, 2014, stating the organization's intent to file suit to compel the Service to issue a 12-month finding as to whether listing the island marble butterfly is warranted, not warranted, or warranted but precluded. We entered into a settlement agreement with Xerces on April 6, 2015, stipulating that we would submit a 12-month finding to the **Federal Register** on or before March 31, 2016. This document constitutes the 12-month finding on the August 22, 2012, petition to list the island marble butterfly as an endangered species.

To ensure the status review was based on the best scientific and commercial information available, the Service requested any new or updated information available for the island marble butterfly when we published our 90-day finding on August 19, 2014. On February 13, 2016, we published a correction to our 90-day finding (80 FR 5719) to address a clerical error affecting the closing date for the initial public comment period; the comment period on the 90-day finding closed on April 6, 2015.

Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and commercial information. This evaluation includes information from all sources, including Federal, State, tribal, academic, and private entities and the public. However, because we completed a status review for the subspecies in 2006, we started our evaluation for this 2016 status review and 12-month finding by considering the November 14, 2006, 12-month finding (71 FR 66292) on the island marble butterfly.

We then considered studies and information that have become available since that finding. A supporting document entitled "Notice of 12-month petition finding on a petition to list the Island marble butterfly" provides a summary of the current (post 2006) literature and information regarding the island marble butterfly's distribution, habitat requirements, life history, and stressors, as well as a detailed account of our five-factor threat analysis. The assessment is available as a supplemental document at Docket No. FWS–R1–ES–2014–0025.

The island marble butterfly is an early-flying Pierid butterfly (meaning that it is in the family of butterflies that includes "whites" and "sulfurs") and only produces a single brood a year. The island marble butterfly is now only found on San Juan Island in a single population centered on American Camp. There are three known plants that can serve as larval host plants for the island marble butterfly, all in the mustard family (Brassicaceae): *Lepidium virginicum* var. *menziesii* (Menzies' pepperweed), a native species; *Brassica rapa* (field mustard), a nonnative species; and *Sisymbrium altissimum* L. (tumble mustard), a nonnative species. Each larval host plant is associated with a specific habitat type, and each is subject to different stressors; for example, Menzies' pepperweed grows in coastal, nearshore habitat and is subject to inundation and storm surge damage, whereas tumble mustard grows primarily in higher elevation sand-dune habitat where dune stabilization and competition with weedy species degrade habitat quality. The island marble butterfly primarily nectars on its larval host plants, but also nectars on a wide variety of additional native and nonnative species.

The island marble butterfly progresses from egg to chrysalis over the course of 38 days, on average, and may spend greater than 330 days in diapause before emerging as adults in late April or early May. Males generally emerge a few days before females and adults live between 6 and 9 days. The adult flight season generally begins in late April to early May and may extend into late June or early July.

Our 2006 12-month finding and the status review conducted for our 2016 12-month finding both considered a number of stressors (natural or human-induced negative pressures affecting individuals or subpopulations of a species) on the island marble butterfly. These include habitat loss attributed to: Development; road construction; road maintenance activities; grassland restoration; agricultural practices; herbivory by black-tailed deer, livestock, European rabbits, and brown garden snails; storm surges; recreation; plant succession; and competition with invasive species. We also evaluated the stressors of over-collection; disease and predation; inadequacy of regulatory mechanisms; small population size and vulnerability to stochastic events; vehicular collisions; insecticide application; and the cumulative effects of these stressors, including small population size and restricted range combined with any stressor that removes individuals from the population or decreases the island marble butterfly's reproductive success.

Habitat loss for the island marble butterfly is extensive and ongoing, and has resulted in the extirpation of the island marble butterfly from much of its former range due, in large part, to: (1) Development; (2) road maintenance activities; (3) agricultural practices; and (4) herbivory by black-tailed deer and livestock. The last known population of the island marble butterfly is centered on American Camp, a unit of the San Juan Island National Historical Park that is managed by the National Park Service, and we evaluated stressors to habitat within the current range of the subspecies. We conclude that herbivory by black-tailed deer and European rabbits, plant succession and competition with invasive species, and a projected increased frequency in storm surges reduce or destroy habitat for the island marble butterfly at American Camp and constitute a threat to the subspecies.

We did not find substantive evidence to conclude that habitat loss attributable to development, road construction, road maintenance activities, agricultural practices, herbivory by livestock and brown garden snails, or recreation are threats at this time. The island marble butterfly occurs almost entirely in National Park Service land. The National Park Service constructed deer exclusion fencing around virtually all suitable island marble butterfly habitat in the park. The fencing has the additional benefit of discouraging park visitors from inadvertently walking through areas potentially occupied by the island marble butterfly. While it is possible that recreation may cause a loss of larval habitat and trampling of individuals in some small portions of the park, we find that the effects of recreation alone do not rise to the level of a threat to the island marble butterfly at this time.

We further considered whether predation is a threat to the island marble butterfly. Direct predation by spiders (on larvae and adults) and wasps (on larvae) accounts for a significant proportion of mortality for the island marble butterfly where grazers are excluded. Where grazers cannot be excluded, incidental predation by browsing black-tailed deer accounts for a high proportion of mortality for eggs and larvae of the island marble butterfly, as deer preferentially eat the flowering heads of the larval host plants where the island marble butterflies lay their eggs. We conclude that direct and incidental predation is a threat to the island marble butterfly.

We reviewed all Federal, State, and local laws, regulations, and other regulatory mechanisms, as well as any conservation efforts, that could reduce or minimize the threats we have identified to the subspecies; we found that existing regulatory mechanisms are being implemented within their scope and provide some benefit to the island marble butterfly.

American Camp, as part of San Juan Island National Historic Park, is managed under the National Park Service's Organic Act and implementing regulations, which promote natural resource conservation in the park and prohibit the collection of the island marble butterfly on lands managed by the park In addition, under the General Management Plan for the park, the National Park Service is required to follow the 2006 Conservation Agreement and Strategy for the Island Marble Butterfly. Conservation actions for the island marble butterfly include restoring native grassland ecosystem components at American Camp; avoiding management actions that would destroy host plants; avoiding vegetation treatments in island marble butterfly habitat when early life-stages are likely to be present; and implementing a monitoring plan for the subspecies.

The island marble butterfly is currently classified as a candidate species by the State of Washington. The Washington Department of Natural Resources owns the Cattle Point Natural Resources Conservation Area consisting of 112 acres directly to the east of American Camp, a portion of which provides potentially suitable habitat for island marble butterflies. Natural Resource Conservation Areas are managed to protect outstanding examples of native ecosystems; habitat for endangered, threatened, and sensitive plants and animals; and scenic landscapes. Removal of any plants or soil is prohibited unless written permission is obtained from Washington Department of Natural Resources. In addition, state- and county-level regulatory mechanisms that influence development and zoning on San Juan and Lopez islands are generally beneficial to suitable habitat that could be occupied by the island marble butterfly in the future.

Given that the very small population at American Camp is likely the only remaining population of the subspecies, we conclude that small population size makes it particularly vulnerable to a number of likely stochastic events that remove individuals from the population or decrease its reproductive success. We further find that the increased frequency and strength of storm surges associated with climate change is a threat to the island marble butterfly.

The scope of the regulatory mechanisms that are currently in place is not sufficient to ameliorate these threats to the subspecies, including habitat loss from herbivory, plant succession, competition with invasive species, and increased frequency and strength of storm surges; predation; and small population size. Therefore, the habitat loss and mortality due to these stressors, when considered in conjunction with small population size and the restricted range of the subspecies, results in cumulative effects that pose a threat to the island marble butterfly.

There is no substantiated evidence that overutilization, either scientific or commercial, is a threat to the island marble butterfly. Similarly, there is no evidence that disease is a threat to the subspecies. Vehicle collisions are a likely stressor, but there is significant uncertainty regarding the extent of negative impacts on the island marble butterfly attributable to vehicular collisions. The best available information does not indicate that vehicular collisions pose a threat to the subspecies at this time. Insecticide application could negatively affect the island marble butterfly, if it were to take place in occupied habitat, but the best available information does not indicate that insecticide use is a threat at this time.

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we identified the following threats: (1) Habitat loss attributable to plant succession and competition with invasive species, herbivory by deer and European rabbits, and storm surges; (2) direct predation by spiders and wasps, and incidental predation by deer; (3) small population size and vulnerability to stochastic events; and (4) the cumulative effects of small population size and restricted range combined with any other stressor that removes individuals from the population or decreases the island marble butterfly's reproductive success. These threats have affected the island marble butterfly throughout the entirety of its range, are ongoing, and are likely to persist into the foreseeable future. When considered individually and cumulatively, these threats are of a high magnitude. Despite existing regulatory mechanisms and other conservation efforts, the threats to the subspecies remain sufficient to put the subspecies is in danger of extinction or likely to become so in the foreseeable future.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the island marble butterfly as an endangered or a threatened species is warranted. We will make a determination on the status of the subspecies as an endangered or threatened species when we publish a proposed listing determination. However, the immediate proposal of a regulation implementing this action is precluded by higher-priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the subspecies at risk of extinction now such that issuing an emergency regulation temporarily listing the subspecies under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the island marble butterfly is not warranted for this subspecies at this time because there are no imminent threats that immediate Federal protection would feasibly ameliorate. However, if at any time we determine that issuing an emergency regulation temporarily listing the island marble butterfly is warranted, we will initiate emergency listing at that time.

We assigned the island marble butterfly a listing priority number (LPN) of 3 based on our finding that the subspecies faces threats that are imminent and of high magnitude. These threats include: (1) Habitat loss attributable to plant succession and competition with invasive species, herbivory by deer and European rabbits, and storm surges; (2) direct predation by spiders and wasps, and incidental predation by deer; (3) small population size and vulnerability to stochastic events; and (4) the cumulative effects of small population size and restricted range combined with any other stressor that removes individuals from the population or decreases the island marble butterfly's reproductive success. This is the highest priority that can be provided to a subspecies under our guidance.

The island marble butterfly will be added to the list of candidate species upon publication of this 12-month finding. We will continue to evaluate this subspecies as new information becomes available. Continuing review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing determination for the island marble butterfly will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

Preclusion and Expeditious Progress

To make a finding that a particular action is warranted-but-precluded, the Service must make two findings: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending listing proposals; and (2) that expeditious progress is being made to add qualified species to either of the Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove species from the Lists (16 U.S.C. 1533(b)(3)(B)(iii)).

Preclusion

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is precluded by higher-priority listing actions: (1) The amount of resources available for completing the proposed listing; (2) the estimated cost of completing the proposed listing; and (3) the Service's workload and prioritization of the proposed listing in relation to other actions.

Available Resources

The resources available for listing actions are determined through the annual Congressional appropriations process. In FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program. This spending cap was designed to prevent the listing function from depleting funds needed for other functions under the Act (for example, recovery functions, such as removing species from the Lists), or for other Service programs (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). The funds within the spending cap are available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; annual "resubmitted" petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating or revising critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

We cannot spend more for the Listing Program than the amount of funds within the spending cap without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, since FY 2002, the Service's budget has included a subcap for critical habitat to ensure that some funds within the spending cap for listing are available for completing Listing Program actions other than critical habitat designations for already-listed species ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session. June 19, 2001)). In FY 2002 and each year until FY 2006, the Service had to use virtually all of the funds within the critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the funds within the critical habitat subcap were available for other listing activities. In some FYs since 2006, we have not needed to use all of the funds within the critical habitat subcap to comply with court orders, and we therefore could use the remaining funds within the subcap towards additional proposed listing determinations for high-priority candidate species. In other FYs, while we did not need to use all of the funds within the critical habitat subcap to comply with court orders, we did not use the remaining funds towards additional proposed listing determinations, and instead used the remaining funds towards completing critical habitat determinations concurrently with proposed listing determinations; this allowed us to combine the proposed listing determination and proposed critical habitat designation into one rule, thereby being more efficient in our work. In FY 2014, based on the Service's workload, we were able to use some of the funds within the critical habitat subcap to fund proposed listing determinations.

For FY 2012, Congress also put in place two additional subcaps within the listing cap: One for listing actions for foreign species and one for petition findings. As with the critical habitat subcap, if the Service does not need to use all of the funds within either subcap, we are able to use the remaining funds for completing proposed or final listing determinations. In FY 2016, based on the Service's workload and available funding, we may use some of the funds within the critical habitat subcap, foreign species subcap, and/or the petitions subcap to fund proposed listing determinations if necessary.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the three subcaps, and the amount of funds needed to complete court-mandated actions within those subcaps, Congress and the courts have in effect determined the amount of money available for listing activities nationwide. Therefore, the funds in the listing cap—other than those within the subcaps needed to comply with court orders or court-approved settlement agreements requiring critical habitat actions for already-listed species, listing actions for foreign species, and petition findings—set the framework within which we make our determinations of preclusion and expeditious progress.

For FY 2016, on December 18, 2015, Congress passed a Consolidated Appropriations Act (Pub. L. 114–113), which provides funding through September 30, 2016. In particular, it includes an overall spending cap of $20,515,000 for the listing program. Of that, no more than $4,605,000 can be used for critical habitat determinations; no more than $1,504,000 can be used for listing actions for foreign species; and no more than $1,501,000 can be used to make 90-day or 12-month findings on petitions. The Service thus has $12,905,000 available to work on proposed and final listing determinations for domestic species. In addition, if the Service has funding available within the critical habitat, foreign species, or petition subcaps after those workloads have been completed, it can use those funds to work on listing actions other than critical habitat designations or foreign species.

Costs of Listing Actions. The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information from those comments into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with proposed critical habitat, $345,000; and for a final listing rule with final critical habitat, $305,000.

Prioritizing Listing Actions. The Service's Listing Program workload is broadly composed of four types of actions, which the Service prioritizes as follows: (1) Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing or critical habitat determinations be completed by a specific date; (2) section 4 (of the Act) listing and critical habitat actions with absolute statutory deadlines; (3) essential litigation-related, administrative, and listing program-management functions; and (4) section 4 listing actions that do not have absolute statutory deadlines. In FY 2010, the Service received many new petitions and a single petition to list 404 species, significantly increasing the number of actions within the second category of our workload—actions that have absolute statutory deadlines. As a result of the petitions to list hundreds of species, we currently have over 460 12-month petition findings yet to be initiated and completed.

To prioritize within each of the four types of actions, we developed guidelines for assigning a listing priority number (LPN) for each candidate species (48 FR 43098, September 21, 1983). Under these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus); a species; or a part of a species (subspecies or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). A species with a higher LPN would generally be precluded from listing by species with lower LPNs, unless work on a proposed rule for the species with the higher LPN can be combined with work on a proposed rule for other high-priority species. This is not the case for the island marble butterfly. Thus, in addition to being precluded by the lack of available resources, the island marble butterfly, with an LPN of 3, is also precluded by work on proposed listing determinations for those candidate species with a higher listing priority.

Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

Since before Congress first established the spending cap for the Listing Program in 1998, the Listing Program workload has required considerably more resources than the amount of funds Congress has allowed for the Listing Program. It is therefore important that we be as efficient as possible in our listing process. Therefore, as we implement our listing work plan and work on proposed rules for the highest-priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as one of the highest priority species. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

Listing Program Workload. Each FY we determine, based on the amount of funding Congress has made available within the Listing Program spending cap, specifically which actions we will have the resources to work on in that FY. We then prepare Allocation Tables that identify the actions that we are funding for that FY, and how much we estimate it will cost to complete each action; these Allocation Tables are part of our record for this notice document and the listing program. Our Allocation Table for FY 2012, which incorporated the Service's approach to prioritizing its workload, was adopted as part of a settlement agreement in a case before the U.S. District Court for the District of Columbia (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 ("MDL Litigation"), Document 31–1 (D. DC May 10, 2011) ("MDL Settlement Agreement")). The requirements of paragraphs 1 through 7 of that settlement agreement, combined with the work plan attached to the agreement as Exhibit B, reflected the Service's Allocation Tables for FY 2011 and FY 2012. In addition, paragraphs 2 through 7 of the agreement require the Service to take numerous other actions through FY 2017—in particular, complete either a proposed listing rule or a not-warranted finding for all 251 species designated as "candidates" in the 2010 candidate notice of review ("CNOR") before the end of FY 2016, and complete final listing determinations within one year of proposing to list any of those species. Paragraph 10 of that settlement agreement sets forth the Service's conclusion that "fulfilling the commitments set forth in this Agreement, along with other commitments required by court orders or court-approved settlement agreements already in existence at the signing of this Settlement Agreement (listed in Exhibit A), will require substantially all of the resources in the Listing Program." As part of the same lawsuit, the court also approved a separate settlement agreement with the other plaintiff in the case; that settlement agreement requires the Service to complete additional actions in specific fiscal years—including 12-month petition findings for 11 species, 90-day petition findings for 477 species, and proposed listing determinations or not-warranted findings for 39 species.

These settlement agreements have led to a number of results that affect our preclusion analysis. First, the Service has been, and will continue to be, limited in the extent to which it can undertake additional actions within the Listing Program through FY 2017, beyond what is required by the MDL settlement agreements. Second, because the settlement is court-approved, two broad categories of actions now fall within the Service's highest priority (compliance with a court order): (1) The Service's entire prioritized workload for FY 2012, as reflected in its Allocation Table; and (2) completion, before the end of FY 2016, of proposed listings or not-warranted findings for the candidate species identified in the 2010 CNOR for which we have not yet proposed listing or made a not-warranted finding. Therefore, each year, one of the Service's highest priorities is to make steady progress towards completing by the end of 2017 proposed and final listing determinations for the 2010 candidate species—based on its LPN prioritization system, preparing multi-species actions when appropriate, and taking into consideration the availability of staff resources.

The island marble butterfly was not listed as a candidate in the 2010 CNOR, nor was the proposed listing for the island marble butterfly included in the Allocation Tables that were reflected in the MDL settlement agreement. As we have discussed above, we have assigned an LPN of 3 to the island marble butterfly. Therefore, even if the Service has some additional funding after completing all of the work required by court orders and court-approved settlement agreements, we would first fund actions with absolute statutory deadlines for species that have LPNs of 1 or 2. In light of all of these factors, funding a proposed listing for the island marble butterfly is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a lower LPN.

Expeditious Progress

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. As with our "precluded" finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resources available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. Thus far, during FY 2016, we have completed four delisting rules.) As discussed below, given the limited resources available for listing, we find that we are making expeditious progress in adding qualified species to the Lists in FY 2016.

We provide below tables cataloguing the work of the Service's Listing Program in FY 2016. Making progress towards adding qualified species to the lists includes all three of the steps necessary for adding species to the Lists: (1) Identifying species that warrant listing; (2) undertaking the evaluation of the best available scientific information about those species and the threats they face, and preparing proposed and final listing rules; and (3) adding species to the Lists by publishing proposed and final listing rules that include a summary of the data on which the rule is based and show the relationship of that data to the rule. After taking into consideration the limited resources available for listing, the competing demands for those funds, and the completed work catalogued in the tables below, we find that we are making expeditious progress to add qualified species to the Lists in FY 2016.

Our accomplishments this year should also be considered in the broader context of our commitment to reduce the number of candidate species in the 2010 CNOR for which we have not made final determinations whether or not to list. The MDL Settlement Agreement, which the court approved on May 10, 2011, required, among other things, that for all 251 species that were included as candidates in the 2010 CNOR, the Service submit to the **Federal Register** proposed listing rules or not-warranted findings by the end of FY 2016, and that for any proposed listing rules, the Service complete final listing determinations within the statutory time frame. Paragraph 6 of the agreement provided indicators that the Service is making adequate progress towards meeting that requirement. To date, the Service has completed proposed listing rules or not-warranted findings for 200 of the 2010 candidate species, as well as final listing rules for 143 of those proposed rules, and is therefore is making adequate progress towards meeting all of the requirements of the MDL settlement agreement. Both by entering into the settlement agreement and by implementing the settlement agreement—including making adequate progress towards making final listing determinations for the 251 species on the 2010 candidate list—the Service is making expeditious progress to add qualified species to the lists.

The Service's progress in FY 2016 included completing and publishing the following determinations:

FY 2016 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR Pages
12/22/2015	90-day and 12-month Findings on a Petition to List the Miami Tiger Beetle as an Endangered or Threatened Species; Proposed Endangered Species Status for the Miami Tiger Beetle.	90-day and 12-month petition findings—substantial and warranted. Proposed listing Endangered	80 FR 79533–79554.
1/6/2016	12-Month Finding on a Petition to List the Alexander Archipelago Wolf as an Endangered or Threatened Species.	12 month petition finding Not warranted	81 FR 435–458.
1/12/2016	90-Day Findings on 17 Petitions	90-day petition findings Substantial and not substantial	81 FR 1368–1375.
3/16/2016	90-Day Findings on 29 Petitions	90-day petition findings Substantial and not substantial	81 FR 14058–14072.

Our expeditious progress also included work on listing actions that we funded in previous fiscal years, and in FY 2016, but have not yet been completed to date. For these species, we have completed the first step, and have been working on the second step, necessary for adding species to the Lists. These actions are listed below. Actions in the table are being conducted under a deadline set by a court through a court order or settlement agreement.

ACTIONS FUNDED IN PREVIOUS FYS AND FY 2016 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement:.	
Fisher (West Coast DPS)	Final listing.
Washington ground squirrel	Proposed listing.

ACTIONS FUNDED IN PREVIOUS FYS AND FY 2016 BUT NOT YET COMPLETED—Continued

Species	Action
Xantus's murrelet	Proposed listing.
4 Florida plants (Florida pineland crabgrass, Florida prairie clover, pineland sandmat, and Everglades bully).	Proposed listing.
Black warrior waterdog	Proposed listing.
Black mudalia	Proposed listing.
Highlands tiger beetle	Proposed listing.
Sicklefin redhorse	Proposed listing.
Texas hornshell	Proposed listing.
Guadalupe fescue	Proposed listing.
Stephan's riffle beetle	Proposed listing.
Huachuca springsnail	Proposed listing.
Actions Subject to Statutory Deadline:.	
11 DPSs of green sea turtle	Final listing.
Big Sandy and Guyandotte River crayfishes	Final listing.
Virgin Islands coqui	12-month petition finding.

Another way that we have been expeditious in making progress to add qualified species to the Lists is that we have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these efforts also contribute towards finding that we are making expeditious progress to add qualified species to the Lists.

San Bernardino Flying Squirrel (*Glaucomys sabrinus californicus*)

Previous Federal Actions

We recognized in four notices of review published in the **Federal Register** that listing the San Bernardino flying squirrel was potentially warranted. On September 18, 1985, the Service issued the first notice identifying vertebrate animal taxa native to the United States being considered for possible addition to the List of Endangered and Threatened Wildlife (List), including the San Bernardino flying squirrel (50 FR 37958). Subsequently, we issued three additional notices, dated January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), that presented an updated compilation of vertebrate and invertebrate animal taxa native to the United States, including the San Bernardino flying squirrel, that we were reviewing for possible addition to the List. This subspecies was categorized in these reviews as a category 2 (C2) taxon, meaning that listing was possibly appropriate but more information was needed before a final decision to list could be made. In the February 28, 1996, notice of review (61 FR 7596), we discontinued the designation of C2 species. Most C2 species were removed from the candidate list, including the San Bernardino flying squirrel.

On August 25, 2010, we received a petition dated August 24, 2010, from the Center for Biological Diversity (CBD), requesting that we list the San Bernardino flying squirrel as endangered or threatened and designate critical habitat concurrent with listing under the Act. The petition clearly identified itself as a petition, was dated, and included the requisite identification information required at 50 CFR 424.14(a). On October 5, 2010, we sent the petitioner a letter acknowledging our receipt of the petition, and responded that we had reviewed the information presented in the petition and had not identified any emergency posing a significant risk to the well-being of the species that would make immediate listing of the species under section 4(b)(7) of the Act necessary. We also stated that, due to court orders and court-approved settlement agreements for other listing and critical habitat determinations under the Act, our listing and critical habitat funding for Fiscal Year 2011 was committed to other projects. We said that we would be unable to make an initial finding on the petition at that time, but would complete the action when workload and funding allowed. On February 1, 2012, we published in the **Federal Register** a 90-day finding (77 FR 4973) that the petition presented substantial information indicating that listing may be warranted and initiated a status review.

On June 17, 2014, CBD sent a notice of intent to sue on our failure to complete a 12-month finding on the San Bernardino flying squirrel. On September 22, 2014, we reached a settlement with CBD (*Center for Biological Diversity* v. *Jewell et al.*, No. 1:14-cv-01021–EGS). The settlement stipulated that we would submit our 12-month finding to the **Federal Register** by April 29, 2016. This document constitutes the 12-month finding on the August 24, 2010, petition to list the San Bernardino flying squirrel as an endangered or threatened species and fulfills our settlement obligation.

This finding is based upon the Species Status Assessment titled "Final Species Status Assessment for San Bernardino Flying Squirrel *(Glaucomys sabrinus californicus)*" (Service 2016) (Species Status Assessment), a scientific analysis of available information prepared by a team of Service biologists from the Service's Carlsbad Fish and Wildlife Office, Pacific Southwest Regional Office, and National Headquarters Office. The purpose of the Species Status Assessment is to provide the best available scientific and commercial information about San Bernardino flying squirrel so that we can evaluate whether or not the subspecies warrants protection under the Act. In the Species Status Assessment, we present the best scientific and commercial data available concerning the status of the subspecies, including past, present, and future stressors. As such, the Species Status Assessment provides the scientific basis that informs our regulatory decision in this document. In this 12-month finding, we apply the standards of the Act and its regulations and policies. The Species Status Assessment can be found on the Internet at *http://www.regulations.gov,* under Docket No. FWS–R8–ES–2016–0046.

Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and commercial information. This evaluation includes information from all sources, including State, Federal, tribal, academic, and private entities and the public.

The San Bernardino flying squirrel is 1 of 25 recognized subspecies of the northern flying squirrel. It is currently only known from the San Bernardino Mountains region. It was previously known to occur in the San Jacinto Mountains. The San Bernardino flying squirrel has not been observed in the San Jacinto Mountain since the 1990s; however, extensive surveys have not been conducted in this area. The habits and population biology of the San Bernardino flying squirrel have not been extensively studied throughout its presumed range.

The San Bernardino flying squirrel is an arboreal (lives in trees) rodent, active year-round, and primarily nocturnal. Individual characteristics of mature or older forested habitat indicate that large-diameter trees, large snags, coarse woody debris, and truffle abundance have been found to be directly related to population densities of the northern flying squirrel. The San Bernardino flying squirrel has been observed in many residential settings and appears to be adaptable to lower density development and residential-forest habitats, as reported in other flying squirrel populations, as long as habitat features such as den sites and canopy cover are available.

The potential threats (identified in the Species Status Assessment as "stressors" or "potential stressors") that may be acting upon the San Bernardino flying squirrel currently or in the future (and consistent with the five listing factors identified in section 4(a)(1) of the Act) were described in the Species Status Assessment (Service 2016, pp. 27–66) (available at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2016–0046). Our 2016 Species Status Assessment included summary evaluations of six potential stressors to the San Bernardino flying squirrel that may have low or medium-level impacts on the subspecies or its habitat, including habitat loss from urban development (Factor A), habitat fragmentation (Factor A), wildland fire fuel treatment (Factor A), wildland fire (Factor A and Factor E), urban air pollution (Factor A), and climate change (Factor A). We evaluated potential impacts associated with overutilization (Factor B), disease (Factor C), and predation (Factor C), but found that the subspecies has not been exposed to these stressors at a level sufficient to result in more than low or no impacts, overall, across the subspecies' range (see Service 2016, pp. 36–39).

Where possible, we analyzed whether potential stressors are acting upon the subspecies for both the San Bernardino Mountains and the San Jacinto Mountains, though the occupancy status of the San Jacinto Mountains is unconfirmed at this time. Given that detailed occupancy and life history data for the San Bernardino flying squirrel are unavailable, we estimated or modeled the extent of habitat suitable to support the San Bernardino flying squirrel using positive detections, vegetation data layers, elevation range, and potential home range size (Service 2016, pp. 27–28). A complete description of the analysis and our methodology is available in the Species Status Assessment (Service 2016, pp. 27–28) and in our GIS procedures summary document (Service 2015a), which are available on *http://www.regulations.gov* under docket number FWS–R8–ES–2016–0046.

Within our estimated suitable San Bernardino flying squirrel habitat in the San Bernardino Mountains we analyzed the effects of habitat loss and fragmentation. We found that 77 percent of land in the San Bernardino Mountains and 65 percent of land in the San Jacinto Mountains is owned by the U.S. Forest Service (USFS). In the San Jacinto Mountains region, approximately 22 percent of San Bernardino flying squirrel suitable habitat is under private ownership, but all but a very small portion of those lands are encompassed within the boundaries of two habitat conservation plans: the Western Riverside County Multi Species Habitat Conservation Plan (MSHCP) and the Coachella Valley MSHCP.

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional, 75-year habitat conservation plan approved in 2004 that addresses 146 listed and unlisted "Covered Species" including the San Bernardino flying squirrel within a 1,260,000 ac (599,904 ha) Plan Area in western Riverside County, California. Conservation objectives identified in the Western Riverside County MSHCP for the San Bernardino flying squirrel include the following: (1) Include within the Western Riverside County MSHCP Conservation Area at least 19,476 ac (7,882 ha) (67 percent) of suitable montane coniferous forest and deciduous woodland and forest habitats within the San Jacinto Mountains Bioregion for breeding, foraging, wintering, and dispersal movement, and (2) confirm occupation of 2,470 ac (1,000 ha) with a mean density of at least 2 individuals per 2.47 ac (2 individuals per ha) in the San Jacinto Mountains; and, in the San Bernardino Mountains, confirm occupation of 247.11 ac (100 ha) within the Western Riverside County MSHCP Conservation Area (Service 2016, pp. 73–74).

The Coachella Valley MSHCP is a large-scale, multijurisdictional, 75-year habitat conservation plan approved in 2008 encompassing about 1.1 million ac (445,156 ha) in the Coachella Valley of central Riverside County, California. The Coachella Valley MSHCP is also a Subregional Plan under the State of California's Natural Community Conservation Planning (NCCP) Act, as amended. The Coachella Valley MSHCP/NCCP addresses 27 listed and unlisted covered species; however, these species do not include the San Bernardino flying squirrel.

The Coachella Valley MSHCP/NCCP was designed to establish a multiple-species habitat conservation program that minimizes and mitigates the expected loss of habitat and incidental take of covered species. The associated permit covers incidental take resulting from habitat loss and disturbance associated with urban development and other proposed covered activities. These activities include public and private development within the plan area that requires discretionary and ministerial actions by permittees subject to consistency with the Coachella Valley MSHCP/NCCP policies. Though the San Bernardino flying squirrel is not a covered species, it will likely receive ancillary benefits from habitat protection measures included in the plan.

A review of applications for development projects in the San Bernardino Mountains found six planned activities; the total area for these projects covers only a small fraction of San Bernardino flying squirrel suitable habitat in this mountain region. Similar project data were not available for the San Jacinto Mountains. In order to analyze the potential impacts of fragmentation, we conducted a spatial analysis using life-history and the most important habitat features associated with northern flying squirrels. We found only 1.3 percent of our estimated suitable habitat in the San Bernardino Mountains and only 5 percent of our estimated suitable habitat in the San Jacinto Mountains to be fragmented due to residential development or other activities (Service 2015a, entire).

The San Bernardino flying squirrel relies on features in the landscape that may be modified or removed by fuel treatment activities; these activities may result in loss or modification of habitat structure and removal of nest trees. However, fuel treatment can provide desirable results to understory plant diversity in forests where fire has been suppressed. We evaluated data from the USFS summarizing their thinning practices and found that the total area subject to this activity over the past 10 years represents only 6 percent of all USFS lands within the San Bernardino Mountains (or about 1,045 ac (423 ha) per year); we are unaware of any thinning activities by the USFS in the San Jacinto Mountains area.

San Bernardino flying squirrel habitat is downwind from California's densely populated South Coast Air Basin. Impacts from air pollution, such as nitrogen deposition and increased ozone, may result in habitat effects including soil acidification, loss of understory diversity, accelerated leaf turnover, and decreased allocation belowground and fine root biomass. Local air quality monitoring has recorded declines in ozone levels in the past 30 years, and local and State regulations on urban air pollution are expected to further reduce ozone levels and nitrogen deposition. However, additional analyses are needed to assess the effects of nitrogen and the combination of nitrogen emissions in combination with ozone level to San Bernardino flying squirrel habitat, as well as to the extent to which the subspecies will respond to any effects.

As a result of fire suppression activities since the early 20th century, forested habitat in the San Bernardino and San Jacinto Mountains is at moderate to high risk of wildland fire. However, this stressor is being reduced by ongoing fuel reduction management techniques. Furthermore, results from a study of habitat use of the San Bernardino flying squirrel following fire has found that they return to moderately burned areas within 7 years after a wildland fire. The subspecies has persisted in the region since its first detection in 1897, despite numerous, periodic, and often large fires.

Downscaled climate projections forecast an overall increase in temperature for the Southern California mountains region, which includes the San Bernardino and San Jacinto mountain ranges. Climate models for southern California also project a small annual mean decrease in precipitation for southern California; however, these models do not show consistent results for future precipitation patterns. Recent studies have shown that ongoing changes in precipitation and temperature have exacerbated the effects of the recent California drought. Given the projections of increased temperature and decreased precipitation, drought may in the future continue to be exacerbated by climate change. The effects of climate change may result in decrease of the forested habitat that supports the San Bernardino flying squirrel and of food resources utilized by the subspecies.

We reviewed all Federal, State, and local laws, regulations, and other regulatory mechanisms intended to minimize the threats to the subspecies and found that existing regulatory mechanisms are being implemented within their scope and provide some benefit to the San Bernardino flying squirrel. We conclude that the best available scientific and commercial information overall indicates that the existing regulatory mechanisms are adequate to address impacts to the San Bernardino flying squirrel from the stressors for which governments may have regulatory control (habitat loss, habitat fragmentation, wildland fire fuel treatment, and urban air pollution).

Cumulative impacts are currently occurring from the combined effects from wildland fire and climate-related changes. Studies have found that that the likelihood and frequency of large wildfires are expected to increase in southwestern California due to rising surface temperatures. The mixed conifer forests ecosystems in the San Bernardino and San Jacinto Mountains are likely currently experiencing the cumulative effects of wildland fire and the warming effects of climate change.

Finding

As required by the Act, we considered the five factors in assessing whether the San Bernardino flying squirrel is an endangered or threatened species throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future stressors faced by the San Bernardino flying squirrel. We reviewed the petition, information available in our files, and other available published and unpublished information, and we coordinated with recognized species and habitat experts and other Federal, State, tribal, and local agencies. Listing is warranted if, based on our review of the best available scientific and commercial data, we find that the stressors to the San Bernardino flying squirrel are so severe or broad in scope that the subspecies is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range.

We evaluated in the Species Status Assessment (Service 2016, pp. 27–66) whether each of the potential stressors is acting upon the subspecies, and we determined that the following are stressors that have acted upon the subspecies and have minimally or moderately affected, or in the future may potentially affect, individuals or portions of suitable habitat: Habitat loss from urban development (Factor A), habitat fragmentation (Factor A), wildland fire fuel treatment (Factor A), wildland fire (Factor A and Factor E), urban air pollution (Factor A), and climate change (Factor A). In our Species Status Assessment, we evaluated potential impacts associated with overutilization (Factor B), disease (Factor C), and predation (Factor C). We found that these potential stressors impacted individual San Bernardino flying squirrels, but that the subspecies has not been exposed to these stressors at a level sufficient to result in more than low or no impacts, overall, across the subspecies' range (see Service 2016, pp. 36–39); thus, we did not discuss them in this document.

Effects from urban development (Factor A) and habitat fragmentation (Factor A) are considered low at this time and are not expected to change in the future based on our assessment of the limited scope of proposed developments in the region, the large percentage of habitat that is owned and managed by the USFS, and our analysis of the small amount of fragmentation of current suitable habitat. Urban air pollution (Factor A) presents a low-level stressor to San Bernardino flying squirrel habitat, and existing regulatory mechanisms such as the California Global Warming Solutions Act of 2006 and the California Clean Air Act are helping to ameliorate any impacts and decrease the overall levels of nitrogen and ozone deposition within the San Bernardino and San Jacinto Mountains. Though impacts from these three stressors—urban development, habitat fragmentation, and urban air pollution—are ongoing and expected to continue, they pose only low-level impacts that are not likely to drive or contribute to the risk of extinction now or in the foreseeable future, and therefore do not rise to the level of a threat.

Wildland fire (Factor A and Factor E) presents a moderate, but periodic, stressor to the San Bernardino flying squirrel and its habitat. Analysis of fire data indicates that forested areas within San Bernardino flying squirrel habitat are burning less frequently than reference conditions, and several fires (reported since the 1980s) in this habitat have burned at moderate to high burn severity. However, despite these conditions, results from an ongoing study to evaluate habitat use by the San Bernardino flying squirrel after a 2007 fire have shown that 35 percent of all detected individuals were found in areas that had been moderately burned 7 years prior to the study, indicating that San Bernardino flying squirrels are resilient to impacts from wildland fire and are able to repopulate burned areas in a short timeframe. Furthermore, resource management actions, such as fuel reduction practices and thinning, that are being implemented by the USFS within the San Bernardino National Forest provide a benefit to the San Bernardino flying squirrel and its habitat by reducing potential wildland fire fuel loads. The San Bernardino Land Management Plan contains specific design criteria and conservation strategies to benefit the San Bernardino flying squirrel and its habitat. These and other management actions currently being implemented by the USFS within the San Bernardino National Forest will continue to provide important conservation benefits to the San Bernardino flying squirrel. Therefore, we conclude that wildland fire is not a threat to the species, because it poses only a low-level stressor that we do not expect to drive or contribute to the risk of extinction of the subspecies now or in the foreseeable future.

Wildland fire fuel treatment (Factor A) may remove habitat structure used by nesting San Bernardino flying squirrels; however, habitat modification and thinning from fuel treatment activities provide a net benefit by reducing the overall risk of wildfire. Furthermore, San Bernardino flying squirrels and other northern flying squirrel subspecies are known to persist in fragmented and edge habitat. Therefore, we find that wildland fire fuel treatment is a low-level stressor that we do not expect to rise to the level of a threat now or in the foreseeable future.

Based on computer model projections, potential effects to the habitat occupied by the San Bernardino flying squirrel from climate change (Factor A) appear to be minimal; however, cumulative impacts from climate change and wildland fire may have an effect on the subspecies and its habitat (Factor A and Factor E). However, we expect these impacts will be mitigated by wildland fire fuel treatment activities. Therefore, we find that climate change and the cumulative effects of climate change and wildland fires together pose a low to moderate stressor to the San Bernardino flying squirrel and its habitat. Though these stressors are ongoing and expected to continue, they do not rise to the level of a threat now or in the foreseeable future.

We also evaluated existing regulatory mechanisms (Factor D) and did not determine an inadequacy of existing regulatory mechanisms for the San Bernardino flying squirrel. Specifically, we found that management actions currently being implemented by the USFS within the San Bernardino National Forest will continue to provide important conservation benefits to the San Bernardino flying squirrel. Additional important Federal mechanisms include protections provided under the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*); USFS Organic Administration Act of 1897, as amended (16 U.S.C. 473–478, 479–482, and 551); and other USFS management policies, practices, and procedures that guide management within San Bernardino National Forest. State review of projects through the California Environmental Quality Act (CEQA) provides an additional layer of protection for the San Bernardino flying squirrel through restrictions on take and through the inclusion of its designation as a "Species of Special Concern" within State (CEQA) planning processes. Additional protections and conservation measures that benefit San Bernardino flying squirrel habitat in the San Jacinto Mountains are provided by the Western Riverside County MSHCP.

The USFS manages approximately 76 percent of the suitable habitat within the San Bernardino Mountains region and 65 percent in the San Jacinto Mountains, and these lands are therefore protected from large-scale urban development and rangewide habitat fragmentation. Furthermore, 33 percent of suitable San Bernardino flying squirrel habitat within the San Jacinto Mountains region is designated as either Federal or State Parks and State Wilderness, which provides an important conservation benefit to the subspecies and its habitat. The subspecies is locally abundant; it has been observed in many residential settings and appears to be adaptable to lower density development and residential-forest habitats, as reported in other flying squirrel populations, as long as habitat features such as available den sites (large trees and snags) and canopy cover are available.

None of the stressors, as summarized above was found to individually or cumulatively affect the San Bernardino flying squirrel to such a degree that listing is warranted at this time. Therefore, based on the analysis contained within the Species Status Assessment (Service 2016, pp. 27–66), we conclude that the best available scientific and commercial information indicates that these stressors are not singly or cumulatively sufficient to cause the San Bernardino flying squirrel to be in danger of extinction, nor are the stressors likely to cause the subspecies to be in danger of extinction in the foreseeable future.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. The Act defines "endangered species" as any species which is "in danger of extinction throughout all or a significant portion of its range," and "threatened species" as any species which is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The term "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature." We published a final policy interpreting the phrase "significant portion of its range" (SPR) (79 FR 37578; July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is "significant" if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service (NMFS) makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making.

The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered or a threatened species, respectively, and no SPR analysis will be required. If the species is neither in danger of extinction nor likely to become so throughout all of its range, we determine whether the species is in danger of extinction or likely to become so throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of "significant" (*i.e.*, the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is endangered or threatened. We must go through a separate analysis to determine whether the species is endangered or threatened in the SPR. To determine whether a species is endangered or threatened throughout an SPR, we will use the same standards and methodology that we use to determine if a species is endangered or threatened throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the "significant" question first, or the status question first. Thus, if we determine that a portion of the range is not "significant," we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is "significant."

We evaluated the current range of the San Bernardino flying squirrel to determine if there is any apparent geographic concentration of potential threats. In this document, we discussed suitable habitat in two geographically separated mountain ranges. We examined potential threats from habitat loss or fragmentation, wildland fire fuel treatment activities, urban air pollution, wildland fire, climate change, the inadequacy of existing regulatory mechanisms, and any cumulative effects from wildland fire and climate-related changes. We found no concentration of threats that suggests that the San Bernardino flying squirrel may be in danger of extinction in a portion of its range. We found no portions of its range where potential threats are significantly concentrated or substantially greater than in other portions of its range, and that there was no higher concentration of threats in the San Bernardino or San Jacinto Mountains. Therefore, we find that factors affecting the San Bernardino flying squirrel are essentially uniform throughout its range, indicating no portion of its range is likely to be in danger of extinction or likely to become so. Therefore, no portion warrants further consideration to determine whether the species may be endangered or threatened in a significant portion of its range.

Conclusion

Our review of the best available scientific and commercial information indicates that the San Bernardino flying squirrel is neither in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing the San Bernardino flying squirrel as an endangered or threatened species under the Act is not warranted at this time.

Spotless Crake (*Porzana tabuensis*)

Previous Federal Actions

In our CNOR published on November 15, 1994 (59 FR 58982), we recognized the American Samoa population of the spotless crake as a candidate for which the Service had sufficient information on the biological vulnerability of, and threats to, the species to determine that listing as endangered or threatened was warranted, but development of a proposal was precluded by other listing actions. Subsequently, we published similar findings on the American Samoa population of the spotless crake in our CNOR on February 28, 1996 (61 FR 7596), September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57534), October 30, 2001 (66 FR 54808), and June 13, 2002 (67 FR 40657). In the 2002 CNOR, we identified the American Samoa population of the spotless crake as a distinct population segment (DPS) for the first time, in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy), which published in the **Federal Register** on February 7, 1996 (61 FR 4722). Throughout this period, the American Samoa population of the spotless crake retained the same status (the Service's label for that status changed from "1" to "C," but the status remained the same).

Through 2004, the spotless crake had an LPN of 6, reflecting the taxonomic identity of the listable entity as a population, with threats that we did not consider to be imminent, in accordance with our 1983 guidance on establishing listing priorities (48 FR 43103; September 21, 1983). In the 2005 CNOR, we changed the LPN from 6 to 3, indicating that, based on new information about the occurrence of nonnative predators in the only known location of the spotless crake in American Samoa, we now considered the threats to this population to be imminent (70 FR 24870; May 11, 2005). Listing the American Samoa population of the spotless crake continued to be precluded by higher-priority listing actions.

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals, including the American Samoa population of the spotless crake, as an endangered or threatened species under the provisions of the Act. Since then, we have published our annual findings on this population, with the LPN of 3, in the

CNORs dated May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69034), December 10, 2008 (73 FR 75176), November 9, 2009 (74 FR 57804), November 10, 2010 (75 FR 69222), October 26, 2011 (76 FR 66370), November 21, 2012 (77 FR 69994), November 22, 2013 (78 FR 70104), December 5, 2014 (79 FR 72450), and December 24, 2015 (80 FR 80584).

As a result of the Service's 2011 multidistrict litigation settlement with petitioners, the Service is required to submit a proposed listing rule or a not-warranted 12-month finding to the **Federal Register** by September 30, 2016 (In re: Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)). This 12-month finding satisfies the requirements of that settlement agreement for the American Samoa population of the spotless crake, and constitutes the 12-month finding on the May 4, 2004, petition to list this population as an endangered or threatened species.

Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and commercial information. This evaluation includes information from all sources, including State, Federal, tribal, academic, and private entities and the public.

The spotless crake (*Porzana tabuensis*) is a very small (length: 6 inches (15 centimeters)), blackish rail, with a gray head, neck, and underparts; dark brown wings and back; black bill; and red iris (Watling 2001, p. 113). In American Samoa, the fossil record indicates the prehistoric occurrence of the spotless crake on the island of Tutuila (Steadman and Pregill 2004, p. 620). In modern times, the spotless crake was first known from a series of 10 specimens that were collected from Tau in 1923, during the Whitney South Sea Expedition (Murphy 1924, p. 124; Banks 1984, p. 156). The population of the species in American Samoa today is presumed to be very small and restricted to the mid-elevation forest and the summit of Tau Island, but a population estimate does not exist because of challenges in monitoring this species, which is extremely shy and occurs in dense vegetation in very remote areas (Badia 2014a, in litt.). Prior to the establishment of survey transects and audio playback surveys conducted in 2013 on Tau, recent observations of the crake were few, primarily opportunistic, and infrequent (Rauzon and Fialua 2003, p. 490; Seamon, in litt. 2004, 2007; Tulafono 2011, in litt.). Based on 2013 surveys and presumed potential for birds to occur in suitable habitat areas not surveyed, Badia (2014b, in litt.) estimated a population size of 130 individuals on Tau. In addition to American Samoa, the global range of the spotless crake includes Australia and island nations throughout the tropical Pacific and Southeast Asia: Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Indonesia, New Caledonia, New Zealand, Niue, Papua New Guinea, the Philippines Pitcairn Islands, Samoa, Solomon Islands, and Tonga (BirdLife International 2016).

We evaluated the American Samoa population of the spotless crake under our DPS Policy, which published in the **Federal Register** on February 7, 1996 (61 FR 4722). Under this policy, we evaluate two elements of a vertebrate population segment, its discreteness and its significance to the taxon as a whole, to assess whether the population segment may be recognized as a DPS. If we determine that a population segment being considered for listing is a DPS, then the population segment's conservation status is evaluated based on the five listing factors established by the Act to determine if listing the DPS as either an endangered or threatened species is warranted.

To meet the discreteness element, a population segment of a vertebrate taxon must be either (1) markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors, or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. The available scientific information indicates that the American Samoa population of the spotless crake is markedly separate from other populations of the species due to geographic (physical) isolation from spotless crake populations on other islands in the oceanic Pacific, the Philippines, and Australia. Although the spotless crake (and other rails) are distributed widely in the Pacific (del Hoyo 1996, p. 134; Steadman 2006, pp. 134, 458), exhibit long-distance vagrancy, and are apparently excellent colonizers of islands on an evolutionary timescale (Ripley 1977, p. 17; Steadman 2006, p. 458), the spotless crake is currently not known for regular migration or frequent long-distance dispersal on an ecological timescale (Taylor 2016). Despite being capable of flight and widely distributed, the spotless crake has been described either as "rarely flying" or a "reluctant flier" (Muse and Muse 1982, p. 83; Watling 2001, p. 113). The distance between the American Samoa population of the spotless crake and the nearest populations of the species makes the probability of accidental immigration low: Samoa lies 100 miles (mi) (160 kilometers (km)) to the west, Tonga approximately 300 to 560 mi (500 to 900 km) to the southwest, and Niue 333 mi (536 km) to the southeast. For the reasons described above, we conclude that long-distance ocean crossings and mixing among populations of the spotless crake and other island rails is extremely rare or highly improbable on an ecological timescale (*i.e.*, decades to centuries). Therefore, we have determined that the American Samoa population of the spotless crake is markedly separate from other populations of the species due to its geographic isolation, and meets the requirements criteria for discreteness under our DPS Policy.

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs, in light of congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity (see U.S. Congress 1979, Senate Report 151, 96th Congress, 1st Session). This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. In this case, we considered available information about the biological and ecological significance of the spotless crake in American Samoa relative to the spotless crake throughout the remainder of its range in Oceania, Australia, the Philippines, and Southeast Asia. We have not found evidence that the loss of the American Samoa population of the spotless crake would be biologically or ecologically significant to the taxon as a whole, and thus this population does not meet our criteria for significance under our DPS Policy.

Unique ecological setting. This population does not occur in an unusual or unique ecological setting. In American Samoa, the spotless crake occurs in dense, sometimes rank vegetation, similar to habitats used in other parts of the species' range (Pratt et al. 1987, p. 126; del Hoyo 1996, p. 189; Watling et al. 2001, p. 113; Badia in litt. 2014a, 2014b, 2015; BirdLife International 2016).

Gap in the range. In our original DPS analysis for the American Samoa population of the spotless crake, we stated that the loss of the population could reduce connectivity within the range of the spotless crake in Oceania and thus would constitute a gap in the range of species as a whole (71 FR 53756, September 12, 2006, on p. 53779). Upon review of the available information, we have concluded that our original analysis was in error. The spotless crake is widespread throughout Oceania, Southeast Asia, and Australia. Some populations across the Pacific Islands occur at distances from each other similar to or greater than the distance between populations that would be created if the American Samoa population were lost. Moreover, as noted above, another population is thought to occur in Samoa (Watling 2001, p. 114; Avibase 2016), about 100 mi (160 km) from Tau Island, where the spotless crake occurs in American Samoa. Our original evaluation of the significance of the American Samoa population to the species as a whole did not properly take into consideration the nearby population in Samoa or the relative distribution of other populations.

As described above, the species' distribution today most likely reflects historical connectivity over time scales of thousands of years or longer, as a result of chance dispersal rather than contemporary migration or frequent intermixing among populations. In our original analysis we did not consider the differing influence between migration or frequent dispersal in ecological time, and chance dispersal in evolutionary time on a species' distribution. Given the poor flight ability of rails generally and the spotless crake's probable low rate of dispersal between islands on an ecological timescale (Ripley 1977, pp. 17–18; Muse and Muse 1982, p. 83; Watling 2001, p. 113), the loss of this population would neither interrupt movement among adjacent populations in ecological time (which is unlikely to occur in any case), nor interfere with the chance or waif dispersal events on an evolutionary timescale (*e.g.,* events that lead to colonization of new islands; Ripley 1977, p. 17). Because American Samoa lies roughly in the center of the species' range in the Pacific Basin, the loss of the American Samoa population would not result in a truncation or shift in the species' distribution, another consideration we did not include in our original analysis. Therefore, loss of the American Samoa population would not result in a significant gap in the species' range.

Only surviving natural occurrence. This criterion does not apply to the American Samoa population of the spotless crake because it is one of many natural occurrences of the species.

Differs markedly from other populations. Our review of the best available information does not indicate that the American Samoa population of the spotless crake is markedly different from populations of the species elsewhere in its behavior, morphology, or genetic characteristics. However, detailed study of the species' behavior and morphology across its range is lacking, and no genetic research exists.

Other considerations. Finally, given the very wide distribution of the spotless crake, the loss of the American Samoa population would not substantively affect the species' conservation status rangewide.

The American Samoa population is geographically isolated from other populations of the species and thus meets discreteness criteria under the DPS policy. It does not, however, meet the criteria for significance to the taxon as a whole. Therefore, the American Samoa population of the spotless crake is not a valid DPS as defined by our DPS Policy, and thus is not a listable entity under the Act.

This determination about the regulatory status of the spotless crake under the Act does not negate the considerable threats faced by the population of this species in American Samoa. Invasive, nonnative plants, such as *Clidemia hirta,* and ungulates, such as feral pigs (*Sus scrofa*) and cattle (*Bos taurus*), damage and degrade the spotless crake's habitat on Tau (Whistler 1992, p. 22; O'Connor and Rauzon 2004, pp. 10–11; Togia pers. comm. in Loope et al. 2013, p. 321; Badia 2014a, 2015, in litt.). Nonnative predators such as rats (*Rattus* spp.) and feral cats (*Felis catus*) have caused the extinction and extirpation of numerous island bird species and populations, especially of ground-nesting species such as rails (Steadman 1995, pp. 1,123, 1,127; Medina et al. 2011, p. 6). These predators are common and widespread on Tau, including on Tau summit (Rauzon and Fialua 2003, p. 491; (O'Connor and Rauzon 2004, pp. 57–59; Adler et al. 2011, pp. 216–217; Badia 2014a, in litt.). Populations that undergo significant decline in numbers and range reduction are inherently highly vulnerable to extinction from chance environmental or demographic events (Shaffer 1981, p. 131; Gilpin and Soulé 1986, pp. 24–34; Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607; Lacey 2000, pp. 40, 44–46). Owing to its low total number of individuals, restricted distribution, and distribution on a single island, the American Samoa population of the spotless crake is susceptible to natural catastrophes such as hurricanes, demographic fluctuations, or inbreeding depression. Existing regulatory mechanisms may provide some conservation benefit to the American Samoa population of the spotless crake, but they do not address the ongoing threats of habitat loss and degradation or predation by nonnative predators.

Finding

The American Samoa population of the spotless crake was originally placed on the candidate list because of the threats to the species in American Samoa and its apparently very low numbers. Those threats still exist. After review of all available scientific and commercial information and upon closer consideration of the significance of this population to the species as a whole, we find that the American Samoa population of the spotless crake does not meet the significance criteria under our DPS policy, and thus does not constitute a listable entity under the Act. Consequently we are removing the American Samoa population of the spotless crake from candidate status. This determination about the regulatory status of the spotless crake under the Act and our DPS Policy does not alter the threats faced by the population of this species in American Samoa or its conservation needs there. Therefore, we ask the public to continue to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, and status of the spotless crake, and we encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts for this rare member of American Samoa's avifauna.

Sprague's Pipit (*Anthus spragueii*)

Previous Federal Actions

On October 10, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians, requesting that we list the Sprague's pipit as endangered or threatened under the Act and designate critical habitat. We published a 90-day finding that the petition presented substantial scientific or commercial information indicating that listing the Sprague's pipit may be warranted in the **Federal Register** on December 3, 2009 (74 FR 63337). On May 19, 2010, the Service and WildEarth Guardians entered into a settlement agreement. According to the agreement, the Service was to submit a 12-month finding to the **Federal Register** on or before September 10, 2010. On September 15, 2010, we published the 12-month petition finding (75 FR 56028). We found that listing the Sprague's pipit as endangered or threatened was warranted. However, listing the Sprague's pipit was precluded by higher-priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants, and the Sprague's pipit was added to our candidate species list. We have since addressed the status of the candidate taxon through our annual CNOR (November 10, 2010 (75 FR 69222), October 26, 2011 (76 FR 66370), November 21, 2012 (77 FR 69994), November 22, 2013 (78 FR 70104), December 5, 2014 (79 FR 72450), and December 24, 2015 (80 FR 80584)). As a result of the Service's 2011 multidistrict litigation settlement, the Service is required to submit a proposed listing rule or a withdrawal of the 12-month finding to the **Federal Register** by September 30, 2016 (In re: Endangered Species Act Section 4 Deadline Litigation, No. 10—377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)).

Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and commercial information. This evaluation includes information from all sources, including State, Federal, tribal, academic, and private entities and the public.

The Sprague's pipit (*Anthus spragueii*) is a small passerine first described by John James Audubon that breeds exclusively in the Northern Great Plains. Sprague's pipits have an affinity for grasslands throughout their range; however they can show flexibility in their use of habitat types in different portions of their range.

The Sprague's pipit breeding range is throughout North Dakota, except for the easternmost counties; northern and central Montana east of the Rocky Mountains; northern portions of South Dakota; north central and northeastern portions of Wyoming; and occasionally northwestern Minnesota. In Canada, Sprague's pipits breed in southeastern Alberta, the southern half of Saskatchewan, and in southwest Manitoba. The Sprague's pipit's wintering range includes south-central and southeast Arizona, Texas, southern Oklahoma, southern Arkansas, northwest Mississippi, southern Louisiana, and northern Mexico.

In 2010, the Sprague's pipit was listed as a candidate species. The major threats to the species identified at that time were native prairie conversion of breeding grounds and energy development, primarily from oil and gas and associated infrastructure. A recent model evaluating habitat use on the breeding grounds allowed us to evaluate the threats facing the species more specifically for this finding and focus on that part of the range where the Sprague's pipit is concentrated (hereafter the core area). Available models indicate that most of the core area is unlikely to be converted because it is relatively low-value land for row-crop agriculture. The most likely future scenario predicts that only about 13 percent of the population will be affected by future habitat conversion on the breeding grounds. In addition, the response to oil and gas development appears to be more nuanced than we previously thought, with less avoidance behavior reported in Canada, where infrastructure is already in place, than had been expected. This suggests the overall disturbance impacts from oil and gas development are lower than we anticipated in our 2010 finding.

We evaluated the Sprague's pipit population trend both within and outside of the core area in the breeding range, as well as for the population overall. Inside the breeding range core area, population estimates from 2005–2014 have a range of uncertainty that means numbers may have slightly increased or decreased, with a somewhat more likely possibility that they decreased. Outside of the breeding range core area, the analysis more clearly indicated a decline from 2005–2014. As noted above, however, current Sprague's pipit populations are concentrated within the core area of the breeding range, and therefore evaluation of the overall population trends from 2005–2014 suggests a more slight population decline than the rates solely outside the core area.

Because recent population declines appear to have been largely outside of the breeding range core area, while the current population is concentrated within the core area where population trends have been more stable, continued overall population decreases at the same rate appear unlikely. In addition, with decreasing commodity prices and changes to crop insurance for conversion of native grassland, we anticipate conversion rates will decrease in the future, rather than continue at the 10-year trend rate. Finally, as noted above, the extent of exposure to threats within the core appears to be less than for exposure to threats outside the core area. For all these reasons, the overall population trends are likely to be more stable in the future than over the last 10 years.

We note that little is known about this species' distribution and habitat use on the wintering grounds in Mexico, where grassland conversion and woody vegetation encroachment into grasslands are occurring. However, the available evidence suggests that the Sprague's pipit is more flexible in its habitat use on the wintering grounds in comparison to breeding rounds. For example, a study in the Chihuahuan Desert found that the Sprague's pipit is broadly distributed and apparently mobile in response to annual habitat conditions. Additionally, in the United States, experts report that Sprague's pipits use a wide variety of native and nonnative grassland types.

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the Sprague's pipit is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. Threats identified in 2010 are now believed to have lower impacts on the Sprague's pipit than understood at that time; recent downward population trends are unlikely to continue at the same rate, and even if they do, they would not indicate the species is likely to become an endangered species in the foreseeable future; and while unknowns remain, especially regarding wintering grounds, the species' adaptability appears greater than previously understood. Because the distribution of the species is relatively stable across its range and stressors are similar throughout the species' range, we found no concentration of stressors that suggests that the Sprague's pipit may be in danger of extinction in any portion of its range. Therefore, we find that listing the Sprague's pipit as an endangered or a threatened species is not warranted throughout all or a significant portion of its range at this time, and consequently we are removing this species from candidate status.

New Information

We request that you submit any new information concerning the status of, or stressors to, the San Bernardino flying squirrel, the American Samoa population of the spotless crake or the Sprague's pipit to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and encourage their conservation. If an emergency situation develops for any of these species, we will act to provide immediate protection.

References Cited

Lists of the references cited in the petition findings are available on the Internet at *http://www.regulations.gov* and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Branch of Listing, Ecological Services Program.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 29, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–07809 Filed 4–4–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 151113999–6206–01]

RIN 0648–BF55

Designating the Sakhalin Bay-Nikolaya Bay-Amur River Stock of Beluga Whales as a Depleted Stock Under the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to designate the Sakhalin Bay-Nikolaya Bay-Amur River Stock of beluga whales (*Delphinapterus leucas*) as a depleted stock of marine mammals pursuant to the Marine Mammal Protection Act (MMPA). This action is being taken as a result of a status review conducted by NMFS in response to a petition to designate a group of beluga whales in the western Sea of Okhotsk as depleted. The biological evidence indicates that the group is a population stock as defined by the MMPA, and the stock is depleted as defined by the MMPA.

DATES: Comments must be received by June 6, 2016.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NMFS–2015–0154, by either of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A list of references cited in this proposed rule and the status review report are available at *www.regulations.gov* (search for docket NOAA–NMFS–2015–0154) or *http://www.fisheries.noaa.gov/pr/species/mammals/whales/beluga-whale.html* or upon request.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 115(a) of the MMPA (16 U.S.C. 1383b(a)) allows interested parties to petition NMFS to initiate a status review to determine whether a species or stock of marine mammals should be designated as depleted. On April 23, 2014, NMFS received a petition from the Animal Welfare Institute, Whale and Dolphin Conservation, Cetacean Society International, and Earth Island Institute (petitioners) to "designate the Sakhalin Bay-Amur River stock of beluga whales as depleted under the MMPA." NMFS published a notice that the petition was available (79 FR 28879, May 20, 2014). After evaluating the petition, NMFS determined that the petition contained substantial information indicating that the petitioned action may be warranted (79 FR 44733, August 1, 2014). Following its determination that the petitioned action may be warranted, NMFS convened a status review team and conducted a status review to evaluate whether the Sakhalin Bay-Amur River group of beluga whales is a population stock and, if so, whether that stock is depleted. This proposed rule is based upon that status review.

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term "depletion" or "depleted" to include "any case in which. . . the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals . . .determines that a species or a population stock is below its optimum sustainable population." NMFS' authority to designate a stock as depleted is not limited to stocks that occur in U.S. jurisdictional waters. Although the Sakhalin Bay-Amur River group of beluga whales does not occur in U.S. jurisdictional waters, NMFS has authority to designate the stock as depleted if it finds that the stock is below its optimum sustainable population.

Status Review

A status review for the population stock of beluga whales addressed in this proposed rule was conducted by a status review team (Bettridge *et al.* 2016). The status review compiled and analyzed information on the stock's distribution, abundance, threats, and historic take from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. The draft status review report was submitted to independent peer reviewers, and comments and information received from peer reviewers were addressed and incorporated as appropriate before finalizing the report.

Sea of Okhotsk Beluga Whales

Beluga whales are small, toothed whales distributed throughout the Arctic and inhabiting subarctic regions of Russia, Greenland, and North America. They are found in the Arctic Ocean and its adjoining seas, including the Sea of Okhotsk, the Bering Sea, the Gulf of Alaska, the Beaufort Sea, Baffin Bay, Hudson Bay, and the Gulf of St. Lawrence. Beluga whales may also be found in large rivers during certain times of the year.

Beluga whales are found throughout much of the Sea of Okhotsk, including Shelikov Bay in the northeast and throughout the western Sea of Okhotsk including the Amur River estuary, the nearshore areas of Sakhalin Bay, in the large bays to the west (Nikolaya Bay, Ulbansky Bay, Tugursky Bay and Udskaya Bay), and among the Shantar Islands. Use of the bays and estuaries in the western Sea of Okhotsk is limited primarily to summer months when belugas may molt (Finley 1982) and give birth to and care for their calves (Sergeant and Brodie 1969). The whales move into the ice-covered offshore areas of the western Sea of Okhotsk in the winter (Melnikov 1999). In the status review and this proposed rule, we refer to the beluga whales found in the Amur River estuary and the nearshore areas of Sakhalin Bay during summer as the Sakhalin River-Amur Bay beluga whales.

The best available estimate of abundance of beluga whales in the Sakhalin Bay-Amur River area is 3,961 (Reeves *et al.* 2011). This estimate was based on aerial surveys conducted in 2009 and 2010 and was further reviewed by an International Union for Conservation of Nature (IUCN) scientific panel of beluga whale experts (Reeves *et al.* 2011). The minimum population estimate for the Sakhalin Bay-Amur River population was determined to be 2,891 (Reeves *et al.* 2011).

Information on potential sources of serious injury and mortality is limited for the Sea of Okhotsk beluga whales. The IUCN panel identified subsistence harvest, death during live-capture for public display, entanglement in fishing gear, vessel strike, climate change, and pollution as human activities that may result in serious injury or mortality to Sea of Okhotsk beluga whales (Reeves *et al.* 2011). The greatest amount of available information is from the estimates of annual take from the commercial hunt. As noted in the petition and the IUCN review, monitoring of other types of mortality in the Sea of Okhotsk is low, if existent at all, and information on possible threats and sources of mortality in Sea of Okhotsk beluga whales is highlighted by a lack of substantiated data, and is largely anecdotal.

Identifying a "Population Stock" or "Stock" Under the MMPA

To designate the Sakhalin Bay-Amur River group of beluga whales as a depleted stock under the MMPA, it must be determined to be a "population stock" or "stock." The MMPA defines "population stock" as "a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature" (MMPA section 3(11)). NMFS' guidelines for assessing stocks of marine mammals (NMFS 2005) state that many different types of information can be used to identify stocks, reproductive isolation is proof of demographic isolation, and demographically isolated groups of marine mammals should be identified as separate stocks. NMFS has interpreted "demographically isolated" as "demographically independent" (see, for example, Weller *et al.* 2013, Moore and Merrick (eds.) 2011).

The guidelines state, specifically: "Many types of information can be used to identify stocks of a species: *e.g.*, distribution and movements, population trends, morphological differences, differences in life history, genetic differences, contaminants and natural isotope loads, parasite differences, and oceanographic habitat differences. Different population responses (*e.g.*, different trends in abundance) between geographic regions is also an indicator of stock structure, as populations with different trends are not strongly linked demographically. When different types of evidence are available to identify stock structure, the report must discuss inferences made from the different types of evidence and how these inferences were integrated to identify the stock.

"Evidence of morphological or genetic differences in animals from different geographic regions indicates that these populations are reproductively isolated. Reproductive isolation is proof of demographic isolation, and, thus, separate management is appropriate when such differences are found. Demographic isolation means that the population dynamics of the affected group is more a consequence of births and deaths within the group (internal dynamics) rather than immigration or emigration (external dynamics). Thus, the exchange of individuals between population stocks is not great enough to prevent the depletion of one of the populations as a result of increased mortality or lower birth rates." (NMFS 2005)

The Sakhalin Bay-Amur River Group of Beluga Whales as a Stock

At the broadest geographic scale in the Sea of Okhotsk, there is strong evidence for genetic differentiation, in both mitochondrial DNA (mtDNA) and nuclear DNA, between beluga whales that summer in the northeastern Sea of Okhotsk off the west Kamchatka coast (east of 145° E. longitude) and those that summer in the western Sea of Okhotsk from Sakhalin Bay to Udskaya Bay, west of 145° E. longitude (Meschersky *et al.* 2013). Since the petition involves individuals in the western aggregations, this proposed rule does not further consider the northeastern aggregations because they are clearly distinct from the beluga whales in the western Sea of Okhotsk.

Available evidence regarding the stock structure of the Sakhalin Bay-Amur River beluga whales relative to other western Sea of Okhotsk beluga whales is limited. A variety of genetic studies have been performed on beluga whales from the western Sea of Okhotsk (see below), and limited telemetry data are available. NMFS considered the following lines of evidence regarding the Sakhalin Bay-Amur River beluga whales to answer the question of whether the group comprises a stock: (1) Genetic comparisons among the summering aggregations in the western Sea of Okhotsk; (2) movement data collected using satellite transmitters; and (3) geographical and ecological separation (site fidelity). Below we summarize the information considered, including information presented in the status review report.

Genetic Data

A variety of genetic studies have been performed on beluga whales from the western Sea of Okhotsk (Meschersky *et al.* 2008, 2013; Meschersky and Yazykova 2012). In these studies, 107 individuals were sampled from the Sakhalin Bay-Amur River area over seven sampling years with relatively even sampling per year and an overall relatively even split between males and females. However, Meschersky *et al.* (2013) suggested that there was a duplicate sample so we considered the correct number to be 106. This sampling is fairly robust and likely sufficiently representative of the haplotypic frequency distribution of the full population. Sampling from the four other bays in the western Sea of Okhotsk (Nikolaya, Ulbansky, Tugursky, and Udskaya) has been less thorough, most of it having been conducted in a single year, and the samples from all four bays are skewed towards males

(Meschersky *et al.* 2013). The sample size from Nikolaya Bay is particularly small, making it difficult to draw conclusions about the relationship of whales in this bay to the other bays based on genetic data.

The genetic comparisons between samples from the beluga whales of the Sakhalin Bay-Amur River and the beluga whales of the other bays consistently found significant differentiation in mtDNA haplotype frequencies among bays, but not between Sakhalin Bay and the adjacent Nikolaya Bay, though the small sample size in Nikolaya Bay may have played a role (Meschersky *et al.* 2013). In some cases, haplotypes were found that were unique to a bay, indicating that most recruitment is internal. However, the presence of some common haplotypes across bays suggests that there may be some external recruitment or, alternatively, founding events have been recent enough that there has not been sufficient time for lineage sorting amongst the bays, resulting in some common haplotypes over large geographic ranges.

Analysis of nuclear microsatellite markers found no evidence for genetic differentiation among the bays of the western Sea of Okhotsk with the exception of a comparison of Sakhalin Bay to the distant Ulbansky Bay (Merschersky 2012, Merschersky *et al.* 2013). This negative finding for differentiation in nuclear DNA does not rule out that beluga whales in these different summer feeding areas could constitute stocks under the MMPA. The mtDNA differences alone are considered to be sufficient evidence for demographic independence.

Telemetry Data

Telemetry data, although sparse, support the conclusions drawn from the genetic data. From 2007–2010, 22 beluga whales were tagged at Sakhalin Bay. Tags transmitted data for 2.5–9.5 months, with an average of six months. Most whales stayed close to the tagging site in summer (Shpak *et al.* 2010), though several tagged whales were sighted in Nikolaya Bay in summer (Shpak *et al.* 2011). Ten whales tagged in 2010 moved in the fall to Nikolaya Bay and the eastern Shantar region, and four went as far as Ulbansky Bay, spending up to three months in these areas. In winter, tagged whales moved north and west into offshore waters (Shpak *et al.* 2012). Though not very many whales have been tagged, the data available to date suggest whales present in the summer in Sakhalin Bay also use Nikolaya Bay, but there is little evidence for movement between Sakhalin Bay and the other bays further to the west during spring and summer.

Geographical and Ecological Separation

Beluga whales in other, better studied areas form strong social groups that follow learned, predictable annual movements between breeding and feeding areas. Summer aggregations often focus on seasonally available fish runs. Site fidelity to summer feeding areas is not uncommon in cetaceans and can often result in genetic differentiation in mtDNA. In some cases, site fidelity is strong enough and occurs over a long enough time period that mtDNA lineage sorting can occur, resulting in mtDNA haplotypes unique to a given feeding area. Sakhalin Bay-Amur River beluga whales exhibit behaviors and frequency differences in mtDNA haplotypes consistent with the general beluga whale life history strategy seen in Alaska, and therefore are considered to be similar to aggregations defined as stocks within Alaska. The two Alaska beluga stocks with movements and seasonal cycles most similar to the Sakhalin Bay-Amur River beluga whales are the Eastern Bering Sea stock and the Bristol Bay stock. Together, genetic and movement data indicate that beluga whales in the western Sea of Okhotsk exhibit life history characteristics and levels of differentiation very similar to beluga whales in Alaska that have been designated as stocks.

Stock Determination

Given the limitations on available data, the status review team used structured expert decision making (SEDM) procedures to evaluate the available data for beluga whales in the western Sea of Okhotsk as they relate to delineating stocks. This approach is often employed as a means to elicit expert opinion while also characterizing uncertainty within the expert opinion, whereby an expert is asked to distribute plausibility points among the choices/scenarios for a given statement reflecting his or her opinion of how likely that choice or option correctly reflects the population status. The status review team members were largely in agreement that Sakhalin Bay-Amur River beluga whales were either their own stock (44.4% of the team's SEDM plausibility points) or belonged to a stock that also included whales that summer in Nikolaya Bay (42.5% of the team's SEDM plausibility points). These results were largely based on mtDNA evidence. The team concluded that, together, genetic and movement data indicate that beluga whales in the western Sea of Okhotsk exhibit life history characteristics and levels of differentiation very similar to beluga whales in Alaska that have been designated as stocks. Given the available data and the assumptions outlined in the status review report, NMFS finds no reason to disagree with the conclusions of the status review team regarding stock structure.

As required by the MMPA, NMFS consulted with the Marine Mammal Commission related to the petition to designate the Sakhalin Bay-Amur River group of beluga whales as a depleted population stock. In a letter dated December 7, 2015, the Commission recommended NMFS take a precautionary approach and define the Sakhalin Bay-Amur River stock to include whales in Nikolaya Bay and promptly publish a proposed rule under section 115(a)(3)(D) of the MMPA to designate this stock as depleted.

Multiple lines of evidence indicate that Sakhalin Bay-Amur River beluga whales are their own stock or are a stock that also includes whales that summer in Nikolaya Bay. The status review team's evaluation of whether the Sakhalin Bay-Amur River stock is discrete or includes whales in Nikolaya Bay was almost evenly divided, based on the lines of evidence reviewed (see above). Given the currently available information, it is equally plausible that the beluga whales in Nikolaya Bay are part of the demographically independent population stock of Sakhalin Bay-Amur River beluga whales than not. Including Nikolaya Bay in the delineation and description of the stock would be a more conservative and precautionary approach, as it would provide any protection afforded under the MMPA to the beluga whales in Sakhalin Bay-Amur River to those beluga whales in Nikolaya Bay. Therefore, based on the best scientific information available as presented in the status review report and this proposed rule, NMFS is identifying the Sakhalin Bay-Nikolaya Bay-Amur River group of beluga whales as a population stock.

The Depleted Determination

As described above, NMFS finds that the Sakhalin Bay-Nikolaya Bay-Amur River group of beluga whales is a population stock. Therefore, the second question to be analyzed is whether the stock is depleted.

Status of the Stock

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term "depletion" or "depleted" to include any case in which "the Secretary, after consultation with the Marine Mammal

Commission and the Committee of Scientific Advisors on Marine Mammals . . . determines that a species or a population stock is below its optimum sustainable population." Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines "optimum sustainable population [(OSP)] . . . with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (*i.e.*, carrying capacity, or K) to its maximum net productivity level (MNPL). MNPL is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

A population stock below its MNPL is, by definition, below OSP and, thus, would be considered depleted under the MMPA. Historically, MNPL has been expressed as a range of values (between 50 and 70 percent of K) determined on a theoretical basis by estimating what stock size, in relation to the historical stock size, will produce the maximum net increase in population (42 FR 12010, March 1, 1977). In practice, NMFS has determined that stocks with populations under the mid-point of this range (*i.e.*, 60 percent of K) are depleted (42 FR 64548, December 27, 1977; 45 FR 72178, October 31, 1980; 53 FR 17888, May 18, 1988; 58 FR 58285, November 1, 1993; 65 FR 34590, May 31, 2000; 69 FR 31321, June 3, 2004). For stocks of marine mammals, including beluga whales, K is generally unknown. NMFS, therefore, has used the best estimate available of maximum historical abundance as a proxy for K (64 FR 56298, October 19, 1999; 68 FR 4747, January 30, 2003; 69 FR 31321, June 3, 2004). One technique NMFS has employed to estimate maximum historical abundance is the back-calculation method, which assumes that the historic population was at equilibrium, and that the environment has not changed greatly. The back-calculation approach looks at the current population and then calculates historic carrying capacity based on how much the population has been reduced by anthropogenic actions. For example, the back-calculation approach was applied in the management of the subsistence hunt of the Cook Inlet beluga whale stock (73 FR 60976, October 15, 2008). The status review team concluded, and NMFS agrees, that the back-calculation technique is the most appropriate to use in determining the abundance of the stock relative to OSP. This analysis is summarized below.

Application of Back Calculation to Sakhalin Bay-Nikolaya Bay-Amur River Beluga Whales

As stated above, the back-calculation method looks at the current population level and then calculates historical carrying capacity based on how much the population has been reduced by human actions. The best available estimate of abundance beluga whales in the Sakhalin Bay-Amur River area is 3,961 (Reeves *et al.* 2011; see details in the *Population Size* section below). The best available removal data for the Sakhalin Bay-Amur River stock of beluga whales are a time series of removals by hunt and live capture since 1915 (Shpak *et al.* 2011; see details in the *Catch History* section below). It was not feasible to develop an estimate of any additional anthropogenic mortality on this stock. These data, plus an estimate of the stock's productivity, allow back-calculation of the historical stock size (*i.e.*, K) that probably existed prior to the beginning of the catch history.

A population model was used to perform the necessary calculations. In short, for each year, the model calculates the expected number of animals added to the stock (by natural population growth) and it subtracts the number removed, and then the model grows or shrinks the population for the next year according to the difference between the growth and the removals. A computer spreadsheet search routine finds the value of K that is large enough to have accommodated the removals and low enough to have resulted in a population in 2009–2010 that matches the observed abundance in those years.

The population equation used was $N_{t+1} = N_t(1 + r(1 - (N_t/K)^z) - H_t$ where:

N_t is the population size in year t,
r is the annual rate of increase (productivity) when the population is small,
K is the carrying capacity,
z controls the rate at which productivity declines as N_t approaches K, and
H_t is the removals in year t.

The values of r and z have not been measured for Sakhalin Bay-Amur River beluga whales so values (r = 0.04 and z = 2.39) were used in the "base case." The value for r = 0.04 is a default value for cetaceans used in PBR calculations (NMFS 2005), and z = 2.39 is in the middle of the range considered reasonable for cetaceans. Alternate plausible values for r and z were also evaluated to test the model's sensitivity to changes in these parameters.

Once the back-calculation estimated the value of K that results in the estimated population size in 2009–2010, the population model was projected forward to 2015 to estimate the current population size. The current depletion level was then calculated by dividing the 2015 stock size (estimated by the model) by the estimated carrying capacity (K).

Catch History

Commercial hunts of the Sakhalin Bay-Amur River beluga whale population began in 1915 (Shpak *et al.* 2011) and subsistence hunts have occurred prior to, during, and since this date (see Appendix 1 of the Status Review Report). There are a number of years with known but poorly documented hunts, and years for which more than one estimate is provided. A complete catch history is required to estimate carrying capacity by the back-calculation method, so two options were considered: A "high take" and a "low take" scenario. The high take scenario gave a conservative estimate of depletion, because higher take results in a higher estimated historic K and a more depleted current population relative to K (*i.e.*, lower percentage of K). The low take scenario uses what is thought to be the lowest take possible and provides a minimum estimate for K, resulting in a less depleted current population relative to K (*i.e.*, higher percentage of K). The low take scenario thus provides an upper bound for the population's status relative to K. Both options used catch data from Shpak *et al.* (2011).

The low-take scenario used the take estimates when they were available, and when more than one estimate of take was available, used the lowest value. Years with no indication that takes occurred were left blank and treated as zero. The low-take option was included to evaluate whether this unlikely scenario would still result in a depleted population.

The high take scenario used the take estimates where they were available, and when more than one estimate of take was available, used the highest value. For years when hunts are thought to have occurred but no record is available, missing values were estimated or interpolated from adjacent years with similar hunts. For years when removals for live display are known to have occurred but no record is available, missing values were also estimated or interpolated from adjacent years with known data. The high take scenario is considered the better of the two because it accounts for times when takes are known to have occurred but are not documented. Additionally, the analysis did not account for beluga whales that are struck and lost because these were unavailable, so the high take option may even be an underestimate.

Population Size

The most recent estimate of abundance, 3,961, is based on aerial surveys in 2009 and 2010 (Reeves et al. 2011). The estimate is from only the Sakhalin Bay-Amur River area because there is no current abundance estimate of the Nikolaya Bay region. However, few animals are thought to be in Nikolaya Bay in the survey period compared to the Sakhalin Bay-Amur River, so the estimate accounts for nearly all of the population (Shpak *et al.* 2011). The estimate includes a correction factor, which accounts for beluga whales that were submerged during overflight and not available to be counted.

Estimated Carrying Capacity and Depletion Level

The back-calculation investigated the sensitivities of the effects of a range of parameter values and the high and low catch scenarios. The status review team considered the value of K resulting when r = 0.04 (the default value for MMPA PBR calculations for cetaceans) and z = 2.39 and the high take scenario (which assumes some medium level of catch for years with missing data when take is thought to have or known to have occurred) to be representative of the most likely scenario. The estimate of K for this scenario is 17,700, the projected current (2015) abundance estimate is 4,520, and the estimated depletion level is 25.5% of K. The status review team also estimated the value of K resulting when r = 0.04 and z = 2.39 under the low take scenario, which assumes no mortality for all years with missing data and the lowest level of subsistence take. The estimate of K for this scenario is 13,200, the projected current (2015) abundance estimate is 4,626, and the estimated depletion level is 35.0% of K. Both scenarios indicate the population is currently below MNPL and below the lower limit of the OSP range (which is reached at a depletion level of 60% K).

As noted above, in its OSP analysis, the team used a 2009–2010 abundance estimate from only the Sakhalin Bay-Amur River area because there was no current abundance estimate of the Nikolaya Bay region. However, because few animals are thought to be in Nikolaya Bay in the survey period compared to the Sakhalin Bay-Amur River, the estimate accounts for nearly all of the population (Shpak *et al.* 2011). To conduct the OSP analysis for the combined group of Sakhalin Bay-Amur River and Nikolaya Bay whales, the team added 500 to the abundance estimate to account for Nikolaya Bay, and ran the model using the high take scenario where r = 0.04 and z = 2.39. The result was an increase of fewer than 100 animals in the estimate of K (K = 17,726), and an estimated depletion level of 28.9% of K (projected abundance estimate for 2015 = 5,125). Thus, including Nikolaya Bay whales in the analysis would not change the estimate of K significantly; it would result in a slightly higher percentage of K (*i.e.,* less depleted), but the population is still below OSP (*i.e.,* less than 60% of K).

Based on the best scientific information available data, and considering the assumptions outlined in the status review report, NMFS finds no reason to disagree with the conclusions of the status review team regarding the status of the stock. Therefore, based upon the best scientific information available, NMFS finds that the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales is below its optimum sustainable population level, and proposes to designate the stock as a depleted stock under the MMPA. The proposed depletion designation applies to all biological members of the stock, regardless of whether those individuals are in the wild or in captivity.

Consultation With the Marine Mammal Commission

As required by the MMPA, NMFS consulted with the Marine Mammal Commission on our efforts related to the petition to designate the Sakhalin Bay-Amur River group of beluga whales as a depleted population stock. In a letter dated December 7, 2015, the Commission recommended NMFS take a precautionary approach and define the Sakhalin Bay-Amur River stock to include whales in Nikolaya Bay and promptly publish a proposed rule under section 115(a)(3)(D) of the MMPA to designate this stock as depleted.

Public Comments Solicited

NMFS is soliciting comments from the public on this proposed rule for the designation of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales as depleted under the MMPA.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Similar to Endangered Species Act listing decisions, which are based solely on the best scientific and commercial information available, depleted designations under the MMPA are determined "solely on the basis of the best scientific information available." 16 U.S.C. 1533(b)(1)(A) and 16 U.S.C. 1383b(a)(2). Because Endangered Species Act listings are thus exempt from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (*see* NOAA Administrative Order 216–6.03(e)(1)), NMFS has determined that MMPA depleted designations are also exempt from the requirements of the National Environmental Policy Act. Thus, an environmental assessment or environmental impact statement is not required and have not been prepared for the proposed depleted designation of this stock under the MMPA.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. If implemented, this proposed rule would designate a group of beluga whales in Russian waters (known as the Sakhalin Bay-Nikolaya Bay-Amur River group) as depleted; however, if implemented, this rule would not, by itself, directly regulate the public, including any small entities. The MMPA authorizes NMFS to take certain actions to protect a stock that is designated as depleted. For example, a stock that is designated as depleted meets the definition of a strategic stock under the MMPA. Under provisions of the MMPA, a take reduction team must be established and a take reduction plan developed and implemented within certain time frames if a strategic stock of marine mammals interacts with a Category I or II commercial fishery. However, NMFS has not identified any interactions between commercial fisheries and this group of beluga whales that would result in such a requirement. In addition, under the MMPA, if NMFS determines that impacts on areas of ecological significance to marine mammals may be causing the decline or impeding the recovery of a strategic stock, it may develop and implement conservation or management measures to alleviate those impacts. However, NMFS has not identified information sufficient to make any such determination for this group of beluga whales. The MMPA also requires NMFS to prepare a conservation plan and restore any stock designated as depleted to its optimum sustainable population, unless NMFS determines that such a plan would not promote the conservation of the stock. NMFS has determined that a conservation plan would not promote the conservation of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales and therefore does not plan to implement a conservation plan. In summary, this rule, if implemented, would not directly regulate the public. If any subsequent restrictions placed on the public to protect the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales are included in separate regulations, appropriate analyses under the Regulatory Flexibility Act would be conducted during those rulemaking procedures.

The MMPA prohibits the importation of any marine mammal designated as depleted for purposes of public display (see 16 U.S.C. 1371(a)(3)(B) and 1372(b)). Therefore, this rule, if implemented, would have the indirect effect of prohibiting the future importation of any marine mammal from this stock into the United State for public display. There are 104 facilities in the United States that house marine mammals for the purposes of public display. Of these, only six facilities house beluga whales. There are currently twenty-seven beluga whales at these facilities. None of these beluga whales were taken in the wild from the Sakhalin Bay-Nikolaya Bay-Amur River stock; three whales are progeny of animals taken in the wild from this stock. NMFS receives very few requests to import beluga whales into the United States for purposes of public display, and has no pending requests to import beluga whales for public display. NMFS notes the small number of U.S. entities that house beluga whales and the small number of beluga whales from this stock that are currently permitted for public display in the United States. Because this rule, if implemented, would not prevent an entity from requesting to import a beluga whale from a non-depleted stock for purposes of public display, NMFS finds that this rule, if implemented, would not result in a significant economic impact on a substantial number of small entities.

Accordingly, this proposed rule, if implemented, would not result in a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this proposed rule has been prepared. NMFS invites comment from members of the public who believe this rule, if implemented, will result in a significant economic impact on a substantial number of small entities, or who have additional information relevant to NMFS' analysis.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: March 30, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise noted.

■ 2. In § 216.15, paragraph (j) is added to read as follows:

§ 216.15 Depleted species.

* * * * *

(j) Sakhalin Bay-Nikolaya Bay-Amur River beluga whales (*Delphinapterus leucas*). The stock includes all beluga whales primarily occurring in, but not limited to, waters of Sakhalin Bay, Nikolaya Bay, and Amur River in the Sea of Okhotsk.

[FR Doc. 2016–07713 Filed 4–4–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BF77

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 17A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico (Gulf) Fishery Management Council (Council) has submitted Amendment 17A to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 17A includes actions to extend the Gulf commercial shrimp permit moratorium and retain the royal red endorsement to the Gulf shrimp permit.

DATES: Written comments must be received on or before June 6, 2016.

ADDRESSES: You may submit comments on Amendment 17A, identified by "NOAA–NMFS–2016–0018" by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0018,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 17A, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/shrimp/2016/am17a/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by Amendment 17A was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

In 2002, through Amendment 11 to the FMP, the Council established a Federal commercial open access permit for all vessels harvesting shrimp from federal waters of the Gulf (67 FR 51074, August 7, 2002). Approximately 2,951 vessels had been issued these permits by 2006. After the establishment of the permit, the shrimp fishery experienced economic losses, primarily because of high fuel costs and reduced shrimp prices caused by competition from imports. These economic losses resulted in decreasing numbers of vessels in the fishery, and consequently, reduction of effort. The Council determined that the number of vessels in the offshore shrimp fleet would likely decline to a point where the fishery again became profitable for the remaining participants, and new vessels might want to enter the fishery. That additional effort could negate, or at least lessen, profitability for the fleet as a whole. Consequently, through Amendment 13 to the FMP, the Council established a 10-year moratorium on the issuance of new Federal commercial shrimp vessel permits and established a royal red shrimp endorsement to the Gulf shrimp permit (71 FR 56039, September 26, 2006). The moratorium on permits also indirectly controls shrimping effort in Federal waters and thereby, bycatch levels of juvenile red snapper and sea turtles. The final rule implementing the moratorium was effective October 26, 2006, and the moratorium permits became effective in March 2007. Amendment 17A would extend the moratorium for an additional 10 years until October 26, 2026. Extending the moratorium is expected to maintain the biological, social, and economic benefits to the shrimp fishery achieved under the moratorium over the past 10 years.

The purpose of establishing the royal red shrimp endorsement was to help inform data collectors about who the royal red shrimpers were and collect better information about the fishery. These endorsements are available to anyone with a Federal Gulf commercial shrimp permit and many more royal red shrimp endorsements are issued than the number of vessels actually harvesting royal red shrimp. Royal red shrimp are primarily harvested from deep waters requiring greater capital investment; therefore, historically only a small number of boats have been engaged in harvesting royal red shrimp. In Amendment 17A, the Council considered eliminating the royal red shrimp endorsement to the Gulf shrimp permit. However, the Council chose to retain the endorsement because it may be useful in the future to identify shrimpers who could be exempt from closed areas and for enforcement.

A proposed rule that would implement measures outlined in Amendment 17A has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 17A for Secretarial review, approval, and implementation. Comments on Amendment 17A must be received by June 6, 2016. Comments received during the respective comment periods, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment and will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07732 Filed 4–4–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 65
Tuesday, April 5, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Submission for OMB Review; Comment Request

March 30, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 5, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: ARS Animal Health National Program Assessment Survey Form.

OMB Control Number: 0518–0042.

Summary of Collection: The Agricultural Research Service (ARS) covers the span of nutrition, food safety and quality, animal and plant production and protection, and natural resources and sustainable agricultural systems and it organized into seventeen National Programs addressing specific areas of this research. Research in the Agency is conducted through coordinated National Programs on a five year cycle. The cycle ensures that ARS research meets OMB's Research and Development Investment Criteria and other external requirements, including the Research Title of the Farm Bill, and the Government Performance and Results Act of 1993 (GPRA). These National Programs serve to bring coordination, communication, and empowerment to approximately 750 research projects carried out by ARS and focus on the relevance, impact, and quality of ARS research. The requested voluntary electronic evaluation survey will give the beneficiaries of ARS research the opportunity to provide input on the impact of several ARS National Programs.

Need and Use of the Information: The purpose of the survey is to assess the impact of the research in the current National Program cycle and ensure relevance for the next cycle. Failure to collect input from our customers on the impact of our research program would significantly inhibit the relevance and credibility of the research conducted at ARS.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 800.

Frequency of Responses: Reporting: Other (5 years).

Total Burden Hours: 131.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. 2016–07674 Filed 4–4–16; 8:45 am]

BILLING CODE 3410–03–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee to Discuss Preparations for a Public Hearing Regarding the Civil Rights Impact of Civil Forfeiture Practices in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Thursday April 14, 2016, at 3:00 p.m. EDT for the purpose of discussing preparations for a public hearing regarding the civil rights impact of civil asset forfeiture in the State.

This meeting is available to the public through the following toll-free call-in number: 888–587–0615, conference ID: 9524760. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement at the end of the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines according to their wireless plan, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=255*. Click on the "Meeting Details" and "Documents" links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
  Donna Budnick, Chair
Preparatory Discussion for Public Hearing:
  Civil Rights Impact of Civil Forfeiture Practices in Michigan
Future Plans and Actions
Open Comment
Adjournment

DATES: The meeting will be held on Thursday, April 14, 2016, at 3:00 p.m. EDT Public Call Information:

Dial: 888–587–0615
Conference ID: 9524760

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski at *mwojnaroski@usccr.gov* or 312–353–8311.

Dated March 30, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–07629 Filed 4–4–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that the Maryland Advisory Committee (MD Advisory Committee) will convene meetings by conference call at 12:30 p.m. (EDT) on each of the following Fridays: April 22, May 20, June 17, July 15, August 19, 2016. The purpose of each meeting is to discuss project planning and eventually select topic(s) for the Committee's civil rights review. In addition, at the May 20, 2016, meeting, the members will nominate and select additional Committee officers.

Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–437–9445 and conference call ID: 2956454. An open comment period will be provided to allow members of the public to make a statement. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call number: 1–888–437–9445 and conference call ID: 2956454.

Members of the public are also invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=253*. Click the "Meeting Details" and "Documents" links to download documents. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Welcome and Introductions
  Rollcall
Planning Meeting
  Discuss and Eventually Select Topic(s) for Civil Rights Project Review
  Discuss and Eventually Appoint Working Group(s)
Other Business
Open Comment
Adjournment

DATES: The meetings will be held on the following Fridays: April 22, May 20, June 17, July 15 and August 19, 2016.

Time: Each meeting starts at 12:30 p.m. (EDT).

Public Call-In Information: Conference call number: 1–888–437–9445 and conference call ID: 2956454.

TDD: Dial Federal Relay Service at 1–800–977–8339 and give the operator the above toll-free conference call number and conference call ID.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

Dated: March 30, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–07630 Filed 4–4–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 160322272–6272–01]

2017 Census of Governments

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination and request for comment.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) publishes this notice to request public comment on the content of the 2017 Census of Governments. The Census of Governments is conducted at 5-year intervals (years ending in 2 and 7) and is the most comprehensive compilation of statistics about state and local governments available. The Census Bureau is seeking input on the content of the 2017 Census of Governments to ensure that the Census of Governments continues to be the most comprehensive

measure of state and local governments by adapting to growing areas of interest, accounting and policy changes. The granting of specific authority to conduct the program is Title 13, United States Code (U.S.C.), Section 161, which authorizes and requires the Census of Governments.

DATES: The Census Bureau will begin mailing the 2017 Census of Governments Employment component in the Spring of 2017 and the Finance component in the Fall of 2017. Responses will be due by April 2017 (for the Employment component) and by December 2017 (for the finance component). Therefore, written comments on proposed content changes must be submitted on or before June 6, 2016 to ensure consideration of your comments on the 2017 Census of Governments content.

ADDRESSES: Direct all written comments regarding the 2017 Census of Governments to Kevin Deardorff, Chief, Economy Wide Statistics Division, U.S. Census Bureau, Room 8K154, Washington, DC 20233; or by email *kevin.e.deardorff@census.gov.*

FOR FURTHER INFORMATION CONTACT: Economy-Wide Statistics Division, U.S. Census Bureau, 4600 Silver Hill Road, C/O Kevin Deardorff, Chief, Economy Wide Statistics Division, U.S. Census Bureau, Room 8K154, Washington, DC 20233; or by email *kevin.e.deardorff@census.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 161 of Title 13 U.S.C. directs the Secretary of Commerce to "take, compile, and publish for the year 1957 and for every fifth year thereafter a census of governments. Each such census shall include, but shall not be limited to, data on taxes and tax valuations, governmental receipts, expenditures, indebtedness, and employees of States, counties, cities, and other governmental units." Because of this, the Census of Governments is the most comprehensive, comparable, and precise measure of government economic activity. It identifies the scope and nature of the nation's public sector and provides authoritative benchmark figures of public finance, pensions, and employment. This helps us identify and classify the complex and diverse state and local government organizations, powers, and activities, and measures federal, state, and local fiscal relationships.

This notice requests public comments on the 2017 Census of Governments content as discussed further in Section B of this **Federal Register** notice. Regular content reviews help keep the Census of Governments valuable to policy analysts, researchers, the general public and other federal agencies.

Two federal statistical agencies, the Bureau of Economic Analysis and the Federal Reserve Board, use the Census of Governments data to measure the nation's economic and financial performance. State and local governments use the data to develop programs and budgets, assess financial conditions, and perform comparative analyses. In addition, analysts, economists, market specialists, and researchers need these data to measure the changing characteristics of the government sector of the economy and to conduct public policy research. Journalists report on, and teachers and students learn about, their governments' activities using our data. Internally, the Census Bureau uses these data as a benchmark for all our non-census year samples.

B. Census of Governments Content

For the 2017 Census of Governments, finance and employment data are the same as in comparable annual surveys and include revenues, expenditures, debt, assets, number of employees (by full-time and part-time status), payroll, and benefits. The Census Bureau posted copies of the 2012 Census of Governments forms on its Web site at: *http://www.census.gov/govs/cog/get_forms.html.* Please take a moment to review the forms relevant to your interests and provide us with your comments for us to consider as we prepare content for the 2017 questionnaires. In particular, Forms F–11 and F–12 may be of interest, given recent changes to the accounting standards concerning actuarial data for Public Pensions instituted by the Governmental Accounting Standards Board (GASB). We are especially interested in comments on the usefulness of existing inquiries for continued inclusion and in suggestions for new measures that would be appropriate to include in the Census of Governments.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. The Census Bureau, through the proper established procedures, will be obtaining OMB control numbers under the PRA as we get closer to launching the program in 2017.

Dated: *March 29, 2016.*

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–07736 Filed 4–4–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–16–2016]

Foreign-Trade Zone 17—Kansas City, Kansas, Application for Reorganization, (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 17, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on March 31, 2016.

FTZ 17 was approved by the FTZ Board on December 20, 1973 (Board Order 97, 39 FR 26, January 2, 1974) and reorganized under the ASF on July 8, 2010 (Board Order 1696, 75 FR 41819, July 19, 2010). The zone currently has a service area that includes Wyandotte, Johnson, Douglas, Shawnee, Leavenworth and Miami Counties, Kansas.

The applicant is now requesting authority to expand the service area of the zone to include Atchison, Jefferson and Franklin Counties, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Kansas City Customs and Border Protection Port of Entry.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ

Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 6, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 20, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: March 31, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–07778 Filed 4–4–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Anji DaSol Solar Energy Science & Technology Co., Ltd. ("Anji DaSol"), the Department of Commerce ("the Department") initiated a new shipper review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules, ("solar cells") from the People's Republic of China ("PRC") covering the period December 1, 2014 through November 30, 2015.[1] On March 21, 2016, Anji DaSol timely withdrew its request for a new shipper review.[2] Accordingly, the Department is rescinding the new shipper review with respect to Anji DaSol.

DATES: *Effective Date:* April 5, 2016.

FOR FURTHER INFORMATION CONTACT: Cara Lofaro, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5720.

SUPPLEMENTARY INFORMATION:

Rescission of New Shipper Review

On February 3, 2016, the Department initiated a new shipper review for Anji DaSol, and on March 21, 2016, Anji DaSol withdrew its new shipper review request. Section 351.214(f)(1) of the Department's regulations provides that the Department may rescind a new shipper review if the party that requested the review withdraws its request for review no later than 60 days after the date of publication of the notice of initiation of the requested review. Given that Anji DaSol timely withdrew its request for a new shipper review, the Department is rescinding the new shipper review of the antidumping duty order on solar cells from the PRC with respect to Anji DaSol. Consequently, Anji DaSol will remain part of the PRC-wide entity.

Assessment

Because we are rescinding the new shipper review of Anji DaSol, we are not making a determination as to whether Anji DaSol qualifies for a separate rate. Therefore, Anji DaSol remains part of the PRC-wide entity and any entries covered by this new shipper review will be assessed at the PRC-wide rate. The PRC-wide entity is not under review in the ongoing administrative review covering the 2014–2015 period of review, and therefore, Anji DaSol is not under review in the concurrent administrative review.[3] Accordingly, the Department intends to issue liquidation instructions for any entries by Anji DaSol 15 days after publication of this rescission notice.

Cash Deposit

Effective upon publication of the rescission of the new shipper review of Anji DaSol, the Department will instruct U.S. Customs and Border Protection to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise from Anji DaSol.[4] Because we did not calculate a dumping margin for Anji DaSol or grant Anji DaSol a separate rate in this new shipper review, Anji DaSol continues to be part of the PRC-wide entity. The cash deposit rate for the PRC-wide entity is 238.95 percent. These cash deposit requirements shall remain in effect until further notice.

Notifications to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This rescission and notice are published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: March 29, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–07776 Filed 4–4–16; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 81 FR 5711 (February 3, 2016).

[2] *See* Letter from Anji DaSol to the Secretary of Commerce, "Crystalline Silicon Photovoltaic Cells, Whether or not Assembled Into Modules, from the People's Republic of China; Withdrawal of New Shipper Review Request," dated March 21, 2016.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832 (February 9, 2016).

[4] *See* section 751(a)(2)(B)(iii) of the Tariff Act of 1930, as amended ("the Act"); see also 19 CFR 351.214(e).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–885]

Phosphor Copper From the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 29, 2016.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Eric Greynolds, at (202) 482–3797 or (202) 482–6071, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 9, 2016, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of phosphor copper from the Republic of Korea (Korea), filed in proper form on behalf of Metallurgical Products Company (Metallurgical) (Petitioner).[1] Petitioner is a domestic producer of phosphor copper.[2]

On March 14 and 18, 2016, the Department requested additional information and clarification of certain areas of the Petition.[3] Petitioner filed responses on March 16, 21, and 22, 2016.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that imports of phosphor copper from Korea are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that Petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigation that Petitioner is requesting.[5]

Period of Investigation

Because the Petition was filed on March 9, 2016, the period of investigation (POI) is, pursuant to 19 CFR 351.204(b)(1), January 1, 2015, through December 31, 2015.

Scope of the Investigation

The product covered by this investigation is phosphor copper from Korea. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, the Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[6]

As discussed in the preamble to the Department's regulations,[7] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, April 18, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, April 28, 2016, which is 10 calendar days after the initial comments deadline.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[8] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of phosphor copper to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe phosphor copper, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

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[1] *See* the Petition for the Imposition of Antidumping Duties on Imports of Phosphor Copper from the Republic of Korea, dated March 9, 2016 (the Petition).

[2] *See* Volume I of the Petition, at 1.

[3] *See* Letter from the Department to Petitioner entitled "Re: Petition for the Imposition of Antidumping Duties on Imports of Phosphor Copper from the Republic of Korea: Supplemental Questions" dated March 14, 2016 and Memorandum to the File, "Phone Call with Counsel to Petitioner," dated March 18, 2016.

[4] *See* letter from Petitioner entitled "Phosphor Copper from the Republic of Korea: Response to the Department's Supplemental Questions," dated March 16, 2016 (Petition Supplement 1); *see also* "Phosphor Copper from the Republic of Korea: Response to the Department's Supplemental Questions," dated March 21, 2016 (Petition Supplement 2); and "Phosphor Copper from the Republic of Korea: Supplemental Submission Regarding Scope and Domestic Like Product," dated March 22, 2016 (Scope Supplement).

[5] *See* the "Determination of Industry Support for the Petition" section below.

[6] *See* Petition Supplement 1 and 2 and Scope Supplement.

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See* 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all comments must be filed by 5:00 p.m. EDT on April 18, 2016, which is twenty calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. EDT on April 25, 2016. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the record of this Korea less-than-fair-value investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[9] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[10]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that phosphor copper, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[11]

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in Appendix I of this notice. To establish industry support, Petitioner provided its production of the domestic like product in 2015, as well as estimated total production of the domestic like product for the entire domestic industry.[12] We relied on data in the Petition for purposes of measuring industry support.[13]

Our review of the data provided in the Petition and other information readily available to the Department indicates that Petitioner has established industry support.[14] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[15] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act for the Petition because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[16] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[17] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.[18]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[19]

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[9] *See* section 771(10) of the Act.

[10] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[11] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Phosphor Copper from the Republic of Korea (Korea AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Phosphor Copper from the Republic of Korea (Attachment II). This checklist is dated concurrently with this notice and is on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[12] *See* Volume I of the Petition, at 2–3, and at Exhibit I–3.

[13] *Id.* For a further discussion, *see* Korea AD Initiation Checklist, at Attachment II.

[14] *See* Korea AD Initiation Checklist, at Attachment II.

[15] *See* section 732(c)(4)(D) of the Act; *see also* Korea AD Initiation Checklist, at Attachment II.

[16] *See* Korea AD Initiation Checklist, at Attachment II.

[17] *Id.*

[18] *See* Korea AD Initiation Checklist, at Attachment II.

[19] *See* Volume I of the Petition, at 7–8 and at Exhibit I–9.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price suppression or depression, lost sales and revenues, and impacts on production, capacity utilization, commercial shipments, and financial performance.[20] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[21]

Allegation of Sales at Less-Than-Fair Value

The following is a description of the allegation of sales at less-than-fair value upon which the Department based its decision to initiate the investigation of imports of phosphor copper from Korea. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the initiation checklist.

Export Price

Petitioner based U.S. prices on a 2015 Korean producer's price offerings to its customers in the United States for phosphor copper produced in, and exported from, Korea during the POI.[22] Where applicable, Petitioner made deductions from U.S. price for movement expenses consistent with the delivery terms, including foreign and U.S. inland freight, foreign and U.S. brokerage and handling fees, ocean freight, marine insurance, and U.S. harbor maintenance fees and merchandise processing fees.[23]

Normal Value

Petitioner provided home market price information based on sales, or offers for sale, in Korea of merchandise identical or similar to the product being imported into the United States during the POI.[24] Petitioner made certain adjustments to the price quotes, including deductions for inland freight charges (where applicable).[25]

Petitioner provided information indicating that sales of phosphor copper in Korea were made at prices below the cost of production (COP) and, as a result, also calculated NV based on constructed value (CV).[26] For further discussion of COP and NV based on CV, see below.[27]

Normal Value Based on Constructed Value

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM); SG&A expenses; financial expenses; and packing expenses. Petitioner calculated COM based on a U.S. producer's experience during the proposed POI.[28] Using publicly-available data to value copper and U.S. price data for phosphorus, Petitioner multiplied the usage quantities by the submitted value of the inputs used to manufacture phosphor copper in Korea.[29] Petitioner derived labor and electricity rates from publicly available sources multiplied by the product-specific usage rates.[30] Petitioner relied on a U.S. producer's experience to determine factory overhead.[31] Petitioner relied on the financial statements of Bongsan Co., Ltd. (Bongsan), a Korean producer of identical merchandise, to determine the SG&A rate.[32] We revised the SG&A rate to exclude income and expenses related to investments.[33] Because Bongsan's financial statements show that financial income exceeded financial expenses, Petitioner, conservatively, set financial expenses to zero.[34]

Because certain home market prices fell below COP, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, as noted above, Petitioner also calculated NVs based on CV.[35] Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, financial expenses, packing expenses, and profit. Petitioner calculated CV using the same average COM and SG&A expenses used to calculate COP.[36] Petitioner relied on the financial statements of the same producer that Petitioner used for calculating the SG&A rate to calculate the profit rate.[37] We adjusted Petitioner's calculated profit rate to exclude the investment and expenses items we excluded from SG&A.[38]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of phosphor copper from Korea are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of export price (EP) to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margin(s) for phosphor copper for Korea ranges from 12.55 to 66.54 percent.[39]

Initiation of Less-Than-Fair-Value Investigation

Based upon the examination of the AD Petition on phosphor copper from Korea, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating a less-than-fair-value investigation to determine whether imports of phosphor copper from Korea are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The Department normally relies on import data from Customs and Border Protection (CBP) to select a limited number of producers/exporters for individual examination in market economy AD investigations where the number of exporters/producers is determined to be large. In this case the

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[20] *See* Volume I of the Petition, at 7–8, 12–25 and at Exhibits I–9 and I–11 through I–17.

[21] *See* Korea AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Phosphor Copper from the Republic of Korea.

[22] *See* Korea AD Initiation Checklist; *see also* Volume II of the Petition, at 3 and Exhibit II–3.

[23] *See* Korea AD Initiation Checklist.

[24] *See* Volume II of the Petition, at 9–10 and Exhibit II–3; *see also* Korea AD Initiation Checklist.

[25] *See* Korea AD Initiation Checklist.

[26] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law. *See* Trade Preferences Extension Act of 2015, Pub. L. 114–27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation. *See id* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[27] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for this investigation, the Department will request information necessary to calculate the CV and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. The Department no longer requires a COP allegation to conduct this analysis.

[28] *See* Korea AD Initiation Checklist.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.* at Attachment V.

[34] *See* Korea AD Initiation Checklist.

[35] *Id.*

[36] *Id.*

[37] *See* Korea AD Initiation Checklist.

[38] *Id.*

[39] *See* Petition Supplement 1 at Exhibit SQ–II–5. *See also* Korea AD Initiation Checklist at attachment 5.

Petitioner identified only one company as a producer/exporter of phosphor copper in Korea, Bongsan Co., Ltd. (Bongsan).[40] Petitioner supports its claim with information from Bongsan's corporate Web site, where Bongsan describes itself as the "exclusive firm in Korea' that has challenged copper master alloy production."[41] Furthermore, we know of no additional producers/exporters of merchandise under consideration from Korea. Therefore, consistent with our past practice, the Department intends to examine all known producers/exporters in this investigation, *i.e.,* Bongsan.[42]

We invite interested parties to comment on this issue. Parties wishing to comment must do so within five days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. EST by the date noted above.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the government of Korea via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to the exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of phosphor copper from Korea are materially injuring or threatening material injury to a U.S. industry.[43] A negative ITC determination will result in the investigation being terminated;[44] otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[45] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[46] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[47] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[48] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 29, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is master alloys[49] of copper containing between five percent and 17 percent phosphorus by nominal weight, regardless of form (including but not limited to shot, pellet, waffle, ingot, or nugget), and regardless of size or weight. Subject merchandise consists predominantly of copper (by weight), and may contain other elements, including but not limited to iron

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[40] *See* Volume I of the Petition at 6–7 and Exhibit I–8.

[41] *See* Volume II of the Petition at 2 and Exhibit II–2.

[42] *See, e.g., Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 8614 (February 18, 2015).

[43] *See* section 733(a) of the Act.

[44] *Id.*

[45] *See* 19 CFR 351.301(b).

[46] *See* 19 CFR 351.301(b)(2).

[47] *See* section 782(b) of the Act.

[48] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[49] A "master alloy" is a base metal, such as copper, to which a relatively high percentage of one or two other elements is added.

(Fe), lead (Pb), or tin (Sn), in small amounts (up to one percent by nominal weight). Phosphor copper is frequently produced to JIS H2501 and ASTM B–644, Alloy 3A standards or higher; however, merchandise covered by this investigation includes all phosphor copper, regardless of whether the merchandise meets, fails to meet, or exceeds these standards.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7405.00.1000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE435

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from DONG Energy Massachusetts (U.S.) LLC (DONG Energy) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to high-resolution geophysical (HRG) and geotechnical survey investigations associated with marine site characterization activities off the coast of Massachusetts in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0500) (the Lease Area). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to DONG Energy to incidentally take, by Level B harassment only, small numbers of marine mammals during the specified activities.

DATES: Comments and information must be received no later than May 5, 2016.

ADDRESSES: Comments on DONG Energy's IHA application (the application) should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.fiorentino@noaa.gov.* Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for comments sent to addresses other than those provided here.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental/* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: John Fiorentino, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/.* In case of problems accessing these documents, please call the contact listed above.

National Environmental Policy Act (NEPA)

The Bureau of Ocean Energy Management (BOEM) prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA), to evaluate the issuance of wind energy leases covering the entirety of the Massachusetts Wind Energy Area (including the OCS–A 0500 Lease Area), and the approval of site assessment activities within those leases (BOEM, 2014). NMFS intends to adopt BOEM's EA, if adequate and appropriate. Currently, we believe that the adoption of BOEM's EA will allow NMFS to meet its responsibilities under NEPA for the issuance of an IHA to DONG Energy for HRG and geotechnical survey investigations in the Lease Area. If necessary, however, NMFS will supplement the existing analysis to ensure that we comply with NEPA prior to the issuance of the final IHA. Comments on this proposed IHA will be considered in the development of any additional NEPA analysis or documents (*i.e.,* NMFS' own EA) should they be deemed necessary. BOEM's EA is available on the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm.*

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 4, 2015, NMFS received an application from DONG Energy for the taking of marine mammals incidental to Spring 2016 geophysical survey investigations off the coast of Massachusetts in the OCS–A 0500 Lease Area, designated and offered by the U.S. Bureau of Ocean Energy Management (BOEM), to support the development of an offshore wind project. NMFS determined that the application was adequate and complete on January 27, 2016. On January 20, 2016, DONG Energy submitted a separate request for the taking of marine mammals incidental to proposed geotechnical survey activities within the Lease Area scheduled for Fall 2016. On February 26, 2016, DONG Energy submitted a revision to the take request for the geotechnical activities and an addendum requesting that the two IHA requests be processed as a single application and IHA. NMFS determined that the combined application was adequate and complete on February 26, 2016.

The proposed geophysical survey activities would occur for 4 weeks beginning in early May 2016, and geotechnical survey activities would take place in September 2016 and last for approximately 6 days. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Shallow and medium-penetration sub-bottom profiler (chirper and sparker) and equipment positioning system (also referred to as acoustic positioning system, or pinger) use during the HRG survey, and dynamically positioned (DP) vessel thruster use in support of geotechnical survey activities. Take, by Level B Harassment only, of individuals of 9 species of marine mammals is anticipated to result from the specified activities.

Description of the Specified Activity

Overview

DONG Energy's proposed activities discussed here are based on its February 26, 2016, final IHA application. DONG Energy proposes to conduct a geophysical and geotechnical survey in the Lease Area to support the characterization of the existing seabed and subsurface geological conditions in the Lease Area. This information is necessary to support the siting and design of up to two floating light and detection ranging buoys (FLIDARs) and up to two metocean monitoring buoys, as well as to obtain a baseline assessment of seabed/sub-surface soil conditions in the DONG Energy Massachusetts Lease Area to support the siting of the proposed wind farm.

Dates and Duration

HRG surveys are anticipated to commence in early May 2016 and will last for approximately 30 days, including estimated weather down time. Geotechnical surveys requiring the use of the DP drill ship will take place in September 2016, at the earliest, and will last for approximately 6 days excluding weather downtime.

Specified Geographic Region

DONG Energy's survey activities will occur in the approximately 187,532-acre Lease Area designated and offered by the U.S. Bureau of Ocean Energy Management (BOEM), located approximately 14 miles (mi) south of Martha's Vineyard, Massachusetts, at its closest point (see Figure 1–1 of the IHA application). The Lease Area falls within the Massachusetts Wind Energy Area (MA WEA; Figure 1–1 of the IHA application). An evaluation of site assessment activities within the MA WEA was fully assessed in the BOEM Environmental Assessment (EA) and associated Finding of No Significant Impact (BOEM, 2014). A Biological Opinion on site assessment activities within the MA WEA was issued by NMFS' Greater Atlantic Regional Fisheries Office (formerly Northeast Regional Office) to BOEM in April 2013.

Detailed Description of Activities

High-Resolution Geophysical Survey Activities

Marine site characterization surveys will include the following HRG survey activities:

- Depth sounding (multibeam depth sounder) to determine water depths and general bottom topography;
- Magnetic intensity measurements for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom;
- Seafloor imaging (sidescan sonar survey) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features;
- Subsea equipment positioning using ultra-short baseline (USBL) acoustic positioning systems (pingers);
- Shallow penetration sub-bottom profiler (chirper) to map the near surface stratigraphy (top 0–5 meter [m] soils below seabed); and
- Medium penetration sub-bottom profiler (sparker) to map deeper subsurface stratigraphy as needed (soils down to 75–100 m below seabed).

The HRG surveys are scheduled to begin, at the earliest, on May 1, 2016. Table 1 identifies the representative survey equipment that is being considered in support of the HRG survey activities. The make and model of the listed HRG equipment will vary depending on availability, but will be finalized as part of the survey preparations and contract negotiations with the survey contractor, and therefore the final selection of the survey equipment will be confirmed prior to the start of the HRG survey program. Only the make and model of the HRG equipment may change, not the types of equipment or the addition of equipment with characteristics that might have effects beyond (*i.e.*, resulting in larger ensonified areas) those considered in this proposed IHA. None of the proposed HRG survey activities will result in the disturbance of bottom habitat in the Lease Area.

TABLE 1—SUMMARY OF REPRESENTATIVE DONG ENERGY HRG SURVEY EQUIPMENT

HRG equipment	Operating frequencies	Source level	Source depth	Beamwidth (degree)	Pulse duration (millisec)
iXBlue GAPS equipment positioning system (pinger).	22–30 kHz	192 dB_{RMS}	2–5 m below surface.	180	1
Sonardyne Scout USBL equipment positioning system (pinger).	35–50 kHz	187 dB_{RMS}	2–5 m below surface.	180	1
Edgtech 4125 Sidescan Sonar[1]	400/900/1600 kHz	205 dB_{RMS}	1–2 m below surface.	50	0.6 to 4.9
Klein 3000H Sidescan Sonar[1]	445/900 kHz	242 dB_{RMS}	3–8 m above seafloor.	.2	0.0025 to 0.4
GeoPulse Sub-bottom Profiler (chirper)	1.5 to 18 kHz	208 dB_{RMS}	3–8 m above seafloor.	55	0.1 to 1
Geo-Source 200/800 (sparker)	50 to 5000 Hz	221 dB_{RMS}/217 dB_{RMS}.	1–2 m below surface.	110	1 to 2
SeaBat 7125 Multibeam Sonar[2]	400 kHz	220 dB_{peak}	1–3 m below surface.	2	0.03 to .3

TABLE 1—SUMMARY OF REPRESENTATIVE DONG ENERGY HRG SURVEY EQUIPMENT—Continued

HRG equipment	Operating frequencies	Source level	Source depth	Beamwidth (degree)	Pulse duration (millisec)
EM 2040 Multibeam Sonar [2]	400 kHz	207 dB_{RMS}	1–3 m below surface.	1.5	0.05 to 0.6

[1] It should be noted that only one of the representative sidescan sonars would be selected for deployment.
[2] It should be noted that only one of the representative multibeam sonars would be selected for deployment.

The HRG survey activities will be supported by a vessel approximately 98 to 180 feet (ft) in length and capable of maintaining course and a survey speed of approximately 4 knots while transiting survey lines. HRG survey activities across the Lease Area will generally be conducted at 900-meter (m) line spacing (total survey line approximately 1,800 km). Up to two FLIDARs would be deployed within the Lease Area, and up to three potential locations for FLIDAR deployment will be investigated. At the three potential FLIDAR deployment locations the survey will be conducted along a tighter 30-m line (total survey line approximately 2 km) spacing to meet the BOEM requirements as set out in the July 2015 Guidelines for Providing Geophysical, Geotechnical, and Geohazard Information Pursuant and Archeological and Historic Property Information to 30 CFR part 585.

Given the size of the Lease Area (187,532 acres), to minimize cost, the duration of survey activities, and the period of potential impact on marine species, DONG Energy has proposed conducting survey operations 24 hours per day. Based on 24-hour operations, the estimated duration of the survey activities would be approximately 30 days (including estimated weather down time).

Both NMFS and BOEM have advised that the deployment of HRG survey equipment, including the use of intermittent, impulsive sound-producing equipment operating below 200 kilohertz (kHz) (*e.g.*, sub-bottom profilers), has the potential to cause acoustic harassment to marine mammals. Based on the frequency ranges of the equipment to be used in support of the HRG survey activities (Table 1) and the hearing ranges of the marine mammals that have the potential to occur in the Lease Area during survey activities (Table 2), only the equipment positioning systems (iXBlue GAPS and Sonardyne Scout USBL) and the sub-bottom profilers (GeoPulse Sub-bottom Profiler and Geo-Source 200 and 800) fall within the established marine mammal hearing ranges and have the potential to result in Level B harassment of marine mammals.

The equipment positioning systems use vessel-based underwater acoustic positioning to track equipment (in this case, the sub-bottom profiler) in very shallow to very deep water. Using pulsed acoustic signals, the systems calculate the position of a subsea target by measuring the range (distance) and bearing from a vessel-mounted transceiver to a small acoustic transponder (the acoustic beacon, or pinger) fitted to the target. Equipment positioning systems (either the iXBlue GAPS or Sonardyne Scout) will be operational at all times during HRG survey data acquisition (i.e, concurrent with the sub-bottom profiler operation). Sub-bottom profiling systems identify and measure various marine sediment layers that exist below the sediment/water interface. A sound source emits an acoustic signal vertically downwards into the water and a receiver monitors the return signal that has been reflected off the sea floor. Some of the acoustic signal will penetrate the seabed and be reflected when it encounters a boundary between two layers that have different acoustic impedance. The system uses this reflected energy to provide information on sediment layers beneath the sediment-water interface. A GeoPulse, or similar model, shallow penetration sub-bottom profiler will be used to map the near surface stratigraphy of the Lease Area. The shallow penetration sub-bottom profiler is a precisely controlled hull/pole mounted "chirp" system that emits high-energy sounds with a pulse duration of 0.1 to 1 millisecond (ms) at operating frequencies of 1.5 to 18 kHz and is used to penetrate and profile the shallow (top 0–5 m soils below seabed) sediments of the seafloor. A Geo-Source 200/800, or similar model, medium-penetration sub-bottom profiler (sparker) will be used to map deeper subsurface stratigraphy in the Lease Area as needed (soils down to 75–100 m below seabed). The sparker is towed from a boom arm off the side of the survey vessel and emits a downward pulse with a duration of 1 to 2 ms at an operating frequency of 50 to 5000 Hz.

Geotechnical Survey Activities

Marine site characterization surveys will involve the following geotechnical survey activities:

- Sample boreholes to determine geological and geotechnical characteristics of sediments;
- Deep cone penetration tests (CPTs) to determine stratigraphy and in-situ conditions of the deep surface sediments;
- Shallow CPTs to determine stratigraphy and in-situ conditions of the near surface sediments; and
- Vibracoring to determine geological and geotechnical characteristics of the near surface sediments.

It is anticipated that the geotechnical surveys will take place no sooner than September 2016. The geotechnical survey program will consist of up to 4 deep sample bore holes and adjacent 4 deep CPTs both to a depth of approximately 131 ft to 164 ft (40 m to 50 m) below the seabed, as well as 15 shallow CPTs, and 15 adjacent vibracores, both up to 20 ft (6 m) below seabed.

The investigation activities are anticipated to be conducted from a 250-ft to 350-ft (76 m to 107 m) dynamically positioned (DP) drill ship. DP vessel thruster systems maintain their precise coordinates in waters through the use of automatic controls. These control systems use variable levels of power to counter forces from current and wind. Operations will take place over a 24-hour period to ensure cost, the duration of survey activities, and the period of potential impact on marine species are minimized. Based on 24-hour operations, the estimated duration of the geotechnical survey activities would be approximately 6 days excluding weather downtime. Estimated weather downtime is approximately 4 to 5 days.

Field studies conducted off the coast of Virginia (Tetra Tech, 2014; Kalapinski and Varnik, 2015) to determine the underwater noise produced by borehole drilling and CPTs confirm that these activities do not result in underwater noise levels that harmful or harassing to marine mammals (*i.e.*, do not exceed NMFS' current Level A and Level B harassment thresholds for marine mammals).

However, underwater continuous noise produced by the thrusters associated with the DP drill ship that will be used to support the geotechnical activities has the potential to result in Level B harassment of marine mammals.

Description of Marine Mammals in the Area of the Specified Activity

There are 38 species of marine mammals that potentially occur in the Northwest Atlantic Outer Continental Shelf (OCS) region (BOEM, 2014) (Table 2). The majority of these species are pelagic and/or northern species, or are so rarely sighted that their presence in the Lease Area is unlikely. Six marine mammal species are listed under the Endangered Species Act (ESA) and are known to be present, at least seasonally, in the waters of Southern New England: blue whale, fin whale, humpback whale, right whale, sei whale, and sperm whale. These species are highly migratory and do not spend extended periods of time in a localized area; the waters of Southern New England (including the Lease Area) are primarily used as a stopover point for these species during seasonal movements north or south between important feeding and breeding grounds. While the fin, humpback, and right whales have the potential to occur within the Lease Area, the sperm, blue, and sei whales are more pelagic and/or northern species, and though their presence within the Lease Area is possible, they are considered less common with regards to sightings. In particular, while sperm whales are known to occur occasionally in the region, their sightings are considered rare and thus their presence in the Lease Area at the time of the proposed activities is considered unlikely. Because the potential for sperm whale, blue whale, and sei whale to occur within the Lease Area during the marine survey period is unlikely, these species will not be described further in this analysis.

The following species are both common in the waters of the OCS south of Massachusetts and have the highest likelihood of occurring, at least seasonally, in the Lease Area: North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), short-beaked common dolphin (*Delphinus delphis*), harbor seal (*Phoca vitulina*), and gray seal (*Halichorus grypus*) (Right Whale Consortium, 2014).

Further information on the biology, ecology, abundance, and distribution of those species likely to occur in the Lease Area can be found in section 4 of the application, and the NMFS Marine Mammal Stock Assessment Reports (see Waring *et al.*, 2015), which are available online at: *http://www.nmfs.noaa.gov/pr/species/*.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OF SOUTHERN NEW ENGLAND

Common name	Scientific name	NMFS status	Stock abundance	Stock
Toothed Whales (Odontoceti)				
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	N/A	48,819	W. North Atlantic.
Atlantic spotted dolphin	*Stenella frontalis*	N/A	44,715	W. North Atlantic.
Bottlenose dolphin	*Tursiops truncatus*	Northern coastal stock is Strategic[a].	11,548	W. North Atlantic, Northern Migratory Coastal.
Clymene Dolphin	*Stenella clymene*	N/A	Unknown	W. North Atlantic.
Fraser's Dolphin	*Lagenodelphis hosei*	N/A	Unknown	W. North Atlantic.
Pan-Tropical Spotted Dolphin	*Stenella attenuata*	N/A	3,333	W. North Atlantic.
Risso's dolphin	*Grampus griseus*	N/A	18,250	W. North Atlantic.
Rough-Toothed Dolphin	*Steno bredanensis*	N/A	271	W. North Atlantic.
Short-beaked common dolphin	*Delphinus delphis*	N/A	120,743	W. North Atlantic.
Striped dolphin	*Stenella coeruleoalba*	N/A	46,882	W. North Atlantic.
Spinner Dolphin	*Stenella longirostris*	N/A	Unknown	W. North Atlantic.
White-beaked dolphin	*Lagenorhynchus albirostris*	N/A	2,003	W. North Atlantic.
Harbor porpoise	*Phocoena phocoena*	N/A	79,833	Gulf of Maine/Bay of Fundy.
Killer whale	*Orcinus orca*	N/A	Unknown	W. North Atlantic.
Pygmy Killer Whale	*Feresa attenuata*	N/A	3,785	W. North Atlantic.
False killer whale	*Pseudorca crassidens*	Strategic	442	W. North Atlantic.
Long-finned pilot whale	*Globicephala melas*	N/A	26,535	W. North Atlantic.
Short-finned pilot whale	*Globicephala macrorhynchus*	N/A	21,515	W. North Atlantic.
Sperm whale	*Physeter macrocephalus*	Endangered	2,288	North Atlantic.
Pigmy sperm whale	*Kogia breviceps*	N/A	3,785[b]	W. North Atlantic.
Dwarf sperm whale	*Kogia sima*	N/A	3,785[b]	W. North Atlantic.
Cuvier's beaked whale	*Ziphius cavirostris*	N/A	6,532	W. North Atlantic.
Blainville's beaked whale	*Mesoplodon densirostris*	N/A	7,092[c]	W. North Atlantic.
Gervais' beaked whale	*Mesoplodon europaeus*	N/A	7,092[c]	W. North Atlantic.
True's beaked whale	*Mesoplodon mirus*	N/A	7,092[c]	W. North Atlantic.
Sowerby's Beaked Whale	*Mesoplodon bidens*	N/A	7,092[c]	W. North Atlantic.
Northern bottlenose whale	*Hyperoodon ampullatus*	N/A	Unknown	W. North Atlantic.
Melon-headed whale	*Peponocephala electra*	N/A	Unknown	W. North Atlantic.
Baleen Whales (Mysticeti)				
Minke whale	*Balaenoptera acutorostrata*	N/A	20,741	Canadian East Coast.
Blue whale	*Balaenoptera musculus*	Endangered	Unknown	W. North Atlantic.
Fin whale	*Balaenoptera physalus*	Endangered	1,618	W. North Atlantic.
Humpback whale	*Megaptera novaeangliae*	Endangered	823	Gulf of Maine.
North Atlantic right whale	*Eubalaena glacialis*	Endangered	465	W. North Atlantic.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OF SOUTHERN NEW ENGLAND—Continued

Common name	Scientific name	NMFS status	Stock abundance	Stock
Sei whale	*Balaenoptera borealis*	Endangered	357	Nova Scotia.
Earless Seals (Phocidae)				
Gray seals	*Halichoerus grypus*	N/A	348,900	North Atlantic.
Harbor seals	*Phoca vitulina*	N/A	75,834	W. North Atlantic.
Hooded seals	*Cystophora cristata*	N/A	Unknown	W. North Atlantic.
Harp seal	*Phoca groenlandica*	N/A	Unknown	North Atlantic.

[a] A strategic stock is defined as any marine mammal stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal level; (2) which is declining and likely to be listed as threatened under the ESA; or (3) which is listed as threatened or endangered under the ESA or as depleted under the MMPA.

[b] This estimate may include both the dwarf and pygmy sperm whales.

[c] This estimate includes Gervais' and Blainville's beaked whales and undifferentiated *Mesoplodon* spp. beaked whales.

Sources: Waring *et al.,* 2015; Waring *et al.,* 2013; Waring *et al.,* 2011; Waring *et al.,* 2010; RI SAMP, 2011; Kenney and Vigness-Raposa, 2009; NMFS, 2012.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this "Potential Effects of the Specified Activity on Marine Mammals" section, the "Estimated Take by Incidental Harassment" section, the "Proposed Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals, and from that on the affected marine mammal populations or stocks.

Background on Sound

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's intensity and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. The logarithmic nature of the scale means that each 10-dB increase is a 10-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power). A 10-fold increase in acoustic power does not mean that the sound is perceived as being 10 times louder, however. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are "re: 20 µPa" and "re: 1 µPa," respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels. This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Acoustic Impacts

HRG survey equipment use and use of the DP thruster during the geophysical and geotechnical surveys may temporarily impact marine mammals in the area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (*e.g.,* snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) the behavioral state of the animal (*e.g.,* feeding, traveling, etc.); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Southall *et al.,* 1997; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Southall *et al.* (2007) designated "functional hearing groups" for marine mammals based on available behavioral data; audiograms derived from auditory evoked potentials; anatomical modeling; and other data. Southall *et al.* (2007) also estimated the lower and upper frequencies of functional hearing for each group. However, animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range. Note that direct measurements of hearing sensitivity do not exist for all species of marine mammals, including low-frequency cetaceans. The functional hearing groups and the associated frequencies developed by Southall *et al.* (2007) were revised by Finneran and Jenkins (2012) and have been further modified by NOAA. Table 3 provides a summary of sound production and general hearing capabilities for marine mammal species (note that values in this table are not meant to reflect absolute possible maximum ranges, rather they represent the best known ranges of each functional hearing group). For purposes of the analysis in this document, marine mammals are arranged into the following functional hearing groups based on their generalized hearing sensitivities: high-frequency cetaceans, mid-frequency cetaceans, low-frequency cetaceans (mysticetes), phocids (true seals), and otariids (sea lion and fur seals). A detailed discussion of the functional hearing groups can be found in Southall *et al.* (2007) and Finneran and Jenkins (2012).

TABLE 3—MARINE MAMMAL FUNCTIONAL HEARING GROUPS

Functional hearing group	Functional hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 25 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	200 Hz to 180 kHz.
Phocid pinnipeds (underwater) (true seals)	75 Hz to 100 kHz.
Otariid pinnipeds (underwater) (sea lions and fur seals)	100 Hz to 48 kHz.

Adapted and derived from Southall *et al.* (2007).

* Represents frequency band of hearing for entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Functional hearing is defined as the range of frequencies a group hears without incorporating non-acoustic mechanisms (Wartzok and Ketten, 1999). This is ~60 to ~70 dB above best hearing sensitivity (Southall *et al.,* 2007) for all functional hearing groups except LF cetaceans, where no direct measurements on hearing are available. For LF cetaceans, the lower range is based on recommendations from Southall *et al.,* 2007 and the upper range is based on information on inner ear anatomy and vocalizations.

When sound travels (propagates) from its source, its loudness decreases as the distance traveled by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer away. Acousticians often refer to the loudness of a sound at its source (typically referenced to one meter from the source) as the source level and the loudness of sound elsewhere as the received level (*i.e.,* typically the receiver). For example, a humpback whale 3 km from a device that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound travels through water (*e.g.,* spherical spreading [6 dB reduction with doubling of distance] was used in this example). As a result, it is important to understand the difference between source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual active sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

As mentioned previously in this document, nine marine mammal species (seven cetaceans and two pinnipeds) are likely to occur in the Lease Area. Of the seven cetacean species likely to occur in the Lease Area, four are classified as low-frequency cetaceans (*i.e.,* minke whale, fin whale, humpback whale, and North Atlantic right whale), two are classified as mid-frequency cetaceans (*i.e.,* Atlantic white-sided dolphin and short-beaked common dolphin), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (that is, 40 dB of TTS). PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Given the higher level of sound and longer durations of exposure necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed HRG and geotechnical survey.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong

TTS) days, can be limited to a particular frequency range, and can occur to varying degrees (*i.e.*, a loss of a certain number of dBs of sensitivity). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animals is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (*e.g.*, Finneran *et al.*, 2002 and 2010; Nachtigall *et al.*, 2004; Kastak *et al.*, 2005; Lucke *et al.*, 2009; Mooney *et al.*, 2009; Popov *et al.*, 2011; Finneran and Schlundt, 2010). In general, harbor seals (Kastak *et al.*, 2005; Kastelein *et al.*, 2012a) and harbor porpoises (Lucke *et al.*, 2009; Kastelein *et al.*, 2012b) have a lower TTS onset than other measured pinniped or cetacean species. However, even for these animals, which are better able to hear higher frequencies and may be more sensitive to higher frequencies, exposures on the order of approximately 170 dB rms or higher for brief transient signals are likely required for even temporary (recoverable) changes in hearing sensitivity that would likely not be categorized as physiologically damaging (Lucke *et al.*, 2009). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes (of note, the source operating characteristics of some of DONG Energy's proposed HRG survey equipment—*i.e.*, the equipment positioning systems—are unlikely to be audible to mysticetes). For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), and Finneran (2015).

Scientific literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.*, 2009a, 2009b; Kastak *et al.*, 2007). Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to sub-bottom profilers). For intermittent sounds, less threshold shift will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.*, 1966; Ward, 1997). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends; intermittent exposures recover faster in comparison with continuous exposures of the same duration (Finneran *et al.*, 2010). NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider TTS-onset to be the lowest level at which Level B harassment may occur.

Animals in the Lease Area during the HRG survey are unlikely to incur TTS hearing impairment due to the characteristics of the sound sources, which include low source levels (208 to 221 dB re 1 μPa-m) and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.*, harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.*, 2009; Kastelein *et al.*, 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.*, intermittent exposure results in lower levels of TTS) (Mooney *et al.*, 2009a; Finneran *et al.*, 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause temporary threshold shift and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the sub-bottom profiler and other HRG survey equipment makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel. Boebel *et al.* (2005) concluded similarly for single and multibeam echosounders, and more recently, Lurton (2016) conducted a modeling exercise and concluded similarly that likely potential for acoustic injury from these types of systems is negligible, but that behavioral response cannot be ruled out. Animals may avoid the area around the survey vessels, thereby reducing exposure. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

It is possible that animals in the Lease Area may experience TTS during the use of DP vessel thrusters during the geotechnical survey due to the duration and nature of the noise (continuous, up to 6 days). However, the fact that the DP drill ship is stationary during the geotechnical survey activities makes it less likely that animals would remain in the area long enough to incur TTS. As is the case for the HRG survey activities, animals may avoid the area around the survey vessel, thereby reducing exposure. Any disturbance to marine mammals is more likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey (Tyack, 2000). Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal sound resulting from molecular agitation (Richardson *et al.*, 1995).

Background sound may also include anthropogenic sound, and masking of natural sounds can result when human activities produce high levels of background sound. Conversely, if the background level of underwater sound is high (*e.g.*, on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ambient sound is highly variable on continental shelves (Thompson, 1965; Myrberg, 1978; Chapman *et al.*, 1998; Desharnais *et al.*, 1999). This results in a high degree of variability in the range at which marine mammals can detect anthropogenic sounds.

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.*, 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. Masking is typically of greater concern for those marine mammals that utilize low-frequency communications, such as baleen whales, because of how far low-frequency sounds propagate.

Marine mammal communications would not likely be masked appreciably by the sub-profiler or pingers' signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. And while continuous sound from the DP thruster when in use is predicted to extend 3.4 km to the 120 dB threshold, the generally short duration of DP thruster use and low source levels, coupled with the likelihood of animals to avoid the sound source, would result in very little opportunity for this activity to mask the communication of local marine mammals for more than a brief period of time.

Non-Auditory Physical Effects (Stress)

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical "fight or flight" response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with "stress." These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic function, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called "distress" (Seyle, 1950) or "allostatic loading" (McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker, 2000; Romano *et al.*, 2002; Wright *et al.*, 2008). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In a conceptual model developed by the Population Consequences of Acoustic Disturbance (PCAD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality.

Studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as "distress" upon exposure to high frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b), for example, identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.*, goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

In general, there are few data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007). There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources, are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory HRG and geotechnical activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. An animal's perception of and response to (in both nature and magnitude) an acoustic event can be influenced by prior experience, perceived proximity, bearing of the sound, familiarity of the sound, etc. (Southall *et al.*, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007).

Southall *et al.* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration but were not included in the quantitative analysis for the criteria recommendations. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between pulse sounds (single and multiple) and non-pulse sounds.

The studies that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources, including: vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects do not increase linearly with received levels. Also, few of the laboratory or field datasets had common conditions, behavioral contexts, or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources, including: pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic harassment devices (AHDs), Acoustic Deterrent Devices (ADDs), mid-frequency active sonar, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources, including: pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (around 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.*, 2007). Rapid habituation was noted in some but not all studies.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources, including: AHDs, various non-pulse sounds used in underwater data communication, underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggest that exposures to non-pulse sounds between 90 and 140 dB generally do not result in strong behavioral responses of pinnipeds in water, but no data exist at higher received levels (Southall *et al.*, 2007).

The studies that address the responses of mid-frequency cetaceans to impulse sounds include data gathered both in the field and the laboratory and related to several different sound sources, including: small explosives, airgun arrays, pulse sequences, and natural and artificial pulses. The data show no clear indication of increasing probability and severity of response with increasing received level. Behavioral responses seem to vary depending on species and stimuli. Data on behavioral responses of high-frequency cetaceans to multiple pulses is not available.

The studies that address the responses of pinnipeds in water to impulse sounds include data gathered in the field and related to several different sources, including: small explosives, impact pile driving, and airgun arrays. Quantitative data on reactions of pinnipeds to impulse sounds is limited, but a general finding is that exposures in the 150 to 180 dB range generally have limited potential to induce avoidance behavior (Southall *et al.*, 2007).

Marine mammals are likely to avoid the HRG survey activity, especially the naturally shy harbor porpoise, while the harbor seals might be attracted to them out of curiosity. However, because the sub-bottom profilers and other HRG survey equipment operate from a moving vessel, and the maximum radius to the 160 dB harassment threshold is less than 400 m, the area and time that this equipment would be affecting a given location is very small. Further, once an area has been surveyed, it is not likely that it will be surveyed again, therefore reducing the likelihood of repeated HRG-related impacts within the survey area. And while the drill ship using DP thrusters will generally remain stationary during geotechnical survey activities, the short duration (up to six days) of the DP thruster use would likely result in only short-term and temporary avoidance of the area, rather than permanent abandonment, by marine mammals. Vessel traffic in the project area is relatively high and marine mammals are presumably habituated to noise from project vessels (DP thrusters).

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from DONG Energy's use of HRG survey equipment, on the basis of a 2008 mass stranding of approximately one hundred melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.*, 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.*, 2006; Brownell *et al.*, 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.*, a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.*, 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for HRG survey applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many kilometers. However, other studies have shown that marine mammals at distances more than a few kilometers away often show no apparent response to industrial activities of various types (Miller *et al.*, 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (*e.g.*, Malme *et al.*, 1986; Richardson *et al.*, 1995; Madsen and Mohl, 2000; Croll *et al.*, 2001; Jacobs and Terhune, 2002; Madsen *et al.*, 2002; Miller *et al.*, 2005). In general, pinnipeds seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995) found that vessel sound does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels, and Brueggeman *et al.* (1992) observed ringed seals (*Pusa hispida*) hauled out on ice pans displaying short-term escape reactions when a ship approached within 0.16–0.31 mi (0.25–0.5 km). Due to the relatively high vessel traffic in the Lease Area it is possible that marine mammals are habituated to noise (*e.g.*, DP thrusters) from project vessels in the area.

Vessel Strike

Ship strikes of marine mammals can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.*, bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kts). Given the slow vessel speeds and predictable course necessary for data acquisition, ship strike is unlikely to occur during the geophysical and geotechnical surveys. Marine mammals would be able to easily avoid vessels and are likely already habituated to the presence of numerous vessels in the area. Further, DONG Energy shall implement measures (*e.g.*, vessel speed restrictions and separation distances; see *Proposed Mitigation Measures*) set forth in the BOEM Lease to reduce the risk of a vessel strike to marine mammal species in the Lease Area.

Anticipated Effects on Marine Mammal Habitat

There are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the proposed project area. There is also no designated critical habitat for any ESA-listed marine mammals. NMFS' regulations at 50 CFR part 224 designated the nearshore waters of the Mid-Atlantic Bight as the Mid-Atlantic U.S. Seasonal Management Area (SMA) for right whales in 2008. Mandatory vessel speed restrictions are in place in that SMA from November 1 through April 30 to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds.

Bottom disturbance associated with the HRG survey activities may include grab sampling to validate the seabed classification obtained from the multibeam echosounder/sidescan sonar data. This will typically be accomplished using a Mini-Harmon Grab with 0.1 m^2 sample area or the slightly larger Harmon Grab with a 0.2 m^2 sample area. Bottom disturbance associated with the geotechnical survey activities will consist of the 4 deep bore holes of approximately 3 to 4 inches (in; 7.6 to 10.1 centimeters [cm]) diameter, the 15 shallow CPTs of up to approximately 1 in (2.5 cm) in diameter, and the 4 deep CPTs of approximately 1 in (2.5 cm) in diameter. Impact on marine mammal habitat from these activities will be temporary, insignificant, and discountable.

Because of the temporary nature of the disturbance, the availability of similar habitat and resources (*e.g.*, prey species) in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Proposed Mitigation Measures

With NMFS' input during the application process, and as per the BOEM Lease, DONG Energy is proposing the following mitigation measures during site characterization surveys utilizing HRG survey equipment and use of the DP thruster. The mitigation measures outlined in this section are based on protocols and procedures that have been successfully implemented and resulted in no observed take of marine mammals for similar offshore projects and previously approved by NMFS (ESS, 2013; Dominion, 2013 and 2014).

Marine Mammal Exclusion Zones

Protected species observers (PSOs) will monitor the following exclusion/monitoring zones for the presence of marine mammals:

- A 400-m exclusion zone during HRG surveys when the sub-bottom profiler is in operation (this exceeds the estimated Level B harassment isopleth).
- A 200-m exclusion zone during HRG surveys when all other equipment (*i.e.*, equipment positioning systems) is in operation (this exceeds the estimated Level B harassment isopleth).
- A 3,500-m monitoring zone during the use of DP thrusters during geotechnical survey activities (this exceeds the Level B harassment isopleth).

The radial distances from the sound sources for these exclusion/monitoring zones were derived from acoustic modeling (see Appendix A of the application) and cover the area for both the Level A and Level B harassment zones (*i.e.*, the 190/180 dB and 160 dB isopleths, respectively) when HRG survey equipment is in use, and the Level B harassment zone (the 120 dB isopleth) when DP thrusters are in use; DP thrusters will not produce sound levels at 180 dB re 1 μPa (rms). Acoustic modeling of the HRG survey equipment and DP thrusters was completed based on a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM) and BELLHOP Gaussian beam ray-trace propagation model (Porter and Liu, 1994). BELLHOP and RAM are widely used by sound engineers and marine biologists due to its adaptability to describe highly complex acoustic scenarios. RAM is based on the parabolic equation (Collins, 1993) method using the split-step Padé algorithm for improved numerical accuracy and efficiency in solving range dependent acoustic problems and has been extensively benchmarked (Collins *et al.*, 1996). The BELLHOP algorithm is based on a beam-tracing methodology and provides better accuracy by accounting for increased sound attenuation due to volume absorption at higher frequencies and allowing for source directivity components. The modeling methodologies employed calculate transmission loss based on a number of factors including the distance between the source and receiver along with basic ocean sound propagation parameters (*e.g.*, depths, bathymetry, sediment type, and seasonal sound speed profiles). For each sound source, modeling was performed along transects originating out from the source along compass points (45°, 90°, 135°, 180°, 225°, 270°, 315°, and 360°) and propagated horizontally. The received sound field within each radial plane was then sampled at various ranges and depths from the source with fixed steps. The received sound level at a given location along a given transect was then taken as the maximum value that would occur over all samples within the water column. These values were then summed across frequencies to provide broadband received levels at the MMPA Level A and B harassment criteria. The representative area ensonified to the MMPA Level B threshold for each of the pieces of HRG survey equipment and for the DP thruster use represents the zone within which take of a marine mammal could occur. The distances to the Level A and Level B harassment criteria were used to support the estimate of take as well as the development of the monitoring and/or mitigation measures. The complete acoustic modeling assessment can be found in Appendix A of the application. Radial distance to NMFS' Level A and Level B harassment thresholds are summarized in Tables 4 and 5.

TABLE 4—MODELED DISTANCES TO MMPA THRESHOLDS FOR MARINE MAMMALS DURING HRG SURVEY

HRG Equipment	Marine mammal level A harassment 180 dB_{RMS} re 1 μPa (m)*	Marine mammal level B harassment 160 dB_{RMS} re 1 μPa (m)
ixBlue GAPS (pinger)	< 10	25
Sonardyne Scout USBL (pinger)	0	25
GeoPulse Sub-bottom Profiler (chirper)	30	75
Geo-Source 800 (sparker)	80	250
Geo-Source 200 (sparker)	90	380

* Distances to NMFS' 190 dB level A harassment threshold for pinnipeds are smaller.

TABLE 5—MODELED DISTANCES TO MMPA THRESHOLDS FOR MARINE MAMMALS DURING GEOTECHNICAL SURVEY USING DP THRUSTERS

Survey equipment	Marine mammal level A harassment 180 dB_{RMS} re 1 μPa (m)	Marine mammal level B harassment 120 dB_{RMS} re 1 μPa (m)
DP Thrusters—at 38 m depth	N/A	2,875
DP Thrusters—at 44 m depth	N/A	3,225
DP Thrusters—at 54 m depth	N/A	3,400

Visual monitoring of the established exclusion zone(s) for the HRG and geotechnical surveys will be performed by qualified and NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Observer qualifications will include direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico. An observer team comprising a minimum of four NMFS-approved PSOs and two certified Passive Acoustic Monitoring (PAM) operators (PAM operators will not function as PSOs), operating in shifts, will be stationed aboard either the survey vessel or a dedicated PSO-vessel. PSOs and PAM operators will work in shifts such that no one monitor will work more than 4 consecutive hours without a 2-hour break or longer than 12 hours during any 24-hour period. During daylight hours the PSOs will rotate in shifts of 1 on and 3 off, while during nighttime operations PSOs will work in pairs. The PAM operators will also be on call as necessary during daytime operations should visual observations become impaired. Each PSO will monitor 360 degrees of the field of vision.

PSOs will be responsible for visually monitoring and identifying marine mammals approaching or within the established exclusion zone(s) during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. PAM operators will communicate detected vocalizations to the Lead PSO on duty, who will then be responsible for implementing the necessary mitigation procedures. A mitigation and monitoring communications flow diagram has been included as Appendix B in the IHA application.

PSOs will be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Digital single-lens reflex camera equipment will be used to record sightings and verify species identification. During night operations, PAM (see *Passive Acoustic Monitoring* requirements below) and night-vision equipment in combination with infrared video monitoring will be used (Additional details and specifications of the night-vision devices and infrared video monitoring technology will be provided under separate cover by the DONG Energy Survey Contractor once selected.). Position data will be recorded using hand-held or vessel global positioning system (GPS) units for each sighting.

The PSOs will begin observation of the exclusion zone(s) at least 60 minutes prior to ramp-up of HRG survey equipment. Use of noise-producing equipment will not begin until the exclusion zone is clear of all marine mammals for at least 60 minutes, as per the requirements of the BOEM Lease.

If a marine mammal is detected approaching or entering the 200-m or 400-m exclusion zones during the HRG survey, or the 3,500-m monitoring zone during DP thrusters use, the vessel operator would adhere to the shutdown (during HRG survey) or powerdown (during DP thruster use) procedures described below to minimize noise impacts on the animals.

At all times, the vessel operator will maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below. These stated requirements will be included in the site-specific training to be provided to the survey team.

Vessel Strike Avoidance

The Applicant will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammal and sea turtle sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures will include the following, except under extraordinary circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators will comply with 10 knot (<18.5 km per hour [km/h]) speed restrictions in any Dynamic Management Area (DMA). In addition, all vessels operating from November 1 through July 31 will operate at speeds of 10 knots (<18.5 km/h) or less.
- All survey vessels will maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale.
- If underway, vessels must steer a course away from any sited North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 500 m minimum separation distance has been established. If a North Atlantic right whale is sited in a vessel's path, or within 100 m to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m.
- All vessels will maintain a separation distance of 100 m or greater from any sighted non-delphinoid (*i.e.,* mysticetes and sperm whales) cetaceans. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m.
- All vessels will maintain a separation distance of 50 m or greater from any sighted delphinoid cetacean. Any vessel underway will remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or abeam (*i.e.,* moving away and at a right angle to the centerline of the vessel) of the underway vessel.
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

The training program will be provided to NMFS for review and approval prior to the start of surveys. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey event.

Seasonal Operating Requirements

Between watch shifts, members of the monitoring team will consult the NMFS North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. The proposed survey activities will, however, occur outside of the seasonal management area (SMA) located off the coast of Massachusetts and Rhode Island. The proposed survey activities will also occur in May/June and September, which is outside of the seasonal mandatory speed restriction period for this SMA (November 1 through April 30).

Throughout all survey operations, the Applicant will monitor the NMFS North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS should establish a DMA in the Lease Area under survey, within 24 hours of the establishment of the DMA the Applicant will work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

Passive Acoustic Monitoring

As per the BOEM Lease, alternative monitoring technologies (*e.g.,* active or passive acoustic monitoring) are required if a Lessee intends to conduct geophysical surveys at night or when visual observation is otherwise impaired. To support 24-hour HRG survey operations, DONG Energy will use certified PAM operators with experience reviewing and identifying recorded marine mammal vocalizations, as part of the project monitoring during nighttime operations to provide for optimal acquisition of species detections at night, or as needed during periods when visual observations may be impaired. In addition, PAM systems shall be employed during daylight hours to support system calibration and PSO and PAM team coordination, as well as in support of efforts to evaluate the effectiveness of the various mitigation techniques (*i.e.,* visual observations during day and night, compared to the

PAM detections/operations). Given the range of species that could occur in the Lease Area, the PAM system will consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 10 Hz to 30 kHz). Monitoring of the PAM system will be conducted from a customized processing station aboard the HRG survey vessel. The on-board processing station provides the interface between the PAM system and the operator. The PAM operator(s) will monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). DONG Energy proposes the use of PAMGuard software for 'target motion analysis' to support localization in relation to the identified exclusion zone. PAMGuard is an open source and versatile software/hardware interface to enable flexibility in the configuration of in-sea equipment (number of hydrophones, sensitivities, spacing, and geometry). PAM operators will immediately communicate detections/vocalizations to the Lead PSO on duty who will ensure the implementation of the appropriate mitigation measure (*e.g.,* shutdown) even if visual observations by PSOs have not been made.

Ramp-Up

As per the BOEM Lease, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. A ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Lease Area by allowing them to vacate the area prior to the commencement of survey equipment use. The ramp-up procedure will not be initiated during daytime, night time, or periods of inclement weather if the exclusion zone cannot be adequately monitored by the PSOs using the appropriate visual technology (*e.g.,* reticulated binoculars, night vision equipment) and/or PAM for a 60-minute period. A ramp-up would begin with the power of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The power would then be gradually turned up and other acoustic sources added such that the source level would increase in steps not exceeding 6 dB per 5-minute period. If marine mammals are detected within the HRG survey exclusion zone prior to or during the ramp-up, activities will be delayed until the animal(s) has moved outside the monitoring zone and no marine mammals are detected for a period of 60 minutes.

Shutdown and Powerdown

HRG Survey—The exclusion zone(s) around the noise-producing activities HRG survey equipment will be monitored, as previously described, by PSOs and at night by PAM operators for the presence of marine mammals before, during, and after any noise-producing activity. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement should be discussed only after shutdown.

As per the BOEM Lease, if a non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean is detected at or within the established exclusion zone (200-m exclusion zone during equipment positioning systems use; 400-m exclusion zone during the operation of the sub-bottom profiler), an immediate shutdown of the HRG survey equipment is required. Subsequent restart of the electromechanical survey equipment must use the ramp-up procedures described above and may only occur following clearance of the exclusion zone for 60 minutes. These are extremely conservative shutdown zones, as the 200 and 400-m exclusion radii exceed the distances to the estimated Level B harassment isopleths (Table 4).

As per the BOEM Lease, if a delphinoid cetacean or pinniped is detected at or within the exclusion zone, the HRG survey equipment (including the sub-bottom profiler) must be powered down to the lowest power output that is technically feasible. Subsequent power up of the survey equipment must use the ramp-up procedures described above and may occur after (1) the exclusion zone is clear of a delphinoid cetacean and/or pinniped for 60 minutes or (2) a determination by the PSO after a minimum of 10 minutes of observation that the delphinoid cetacean or pinniped is approaching the vessel or towed equipment at a speed and vector that indicates voluntary approach to bow-ride or chase towed equipment.

If the HRG sound source (including the sub-bottom profiler) shuts down for reasons other than encroachment into the exclusion zone by a marine mammal including but not limited to a mechanical or electronic failure, resulting in in the cessation of sound source for a period greater than 20 minutes, a restart for the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone of all cetaceans and pinnipeds for 60 minutes. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its operational level as long as visual surveys were continued diligently throughout the silent period and the exclusion zone remained clear of cetaceans and pinnipeds. If the visual surveys were not continued diligently during the pause of 20 minutes or less, a restart of the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone for all cetaceans and pinnipeds for 60 minutes.

Geotechnical Survey (DP Thrusters)—During geotechnical survey activities, a constant position over the drill, coring, or CPT site must be maintained to ensure the integrity of the survey equipment. Any stoppage of DP thruster during the proposed geotechnical activities has the potential to result in significant damage to survey equipment. Therefore, during geotechnical survey activities if marine mammals enter or approach the established 120 dB isopleth monitoring zone, the Applicant shall reduce DP thruster to the maximum extent possible, except under circumstances when reducing DP thruster use would compromise safety (both human health and environmental) and/or the integrity of the equipment. Reducing thruster energy will effectively reduce the potential for exposure of marine mammals to sound energy. After decreasing thruster energy, PSOs will continue to monitor marine mammal behavior and determine if the animal(s) is moving towards or away from the established monitoring zone. If the animal(s) continues to move towards the sound source then DP thruster use would remain at the reduced level. Normal use will resume when PSOs report that the marine mammals have moved away from and remained clear of the monitoring zone for a minimum of 60 minutes since the last sighting.

Mitigation Conclusions

NMFS has carefully evaluated DONG Energy's mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

- Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
- A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of activities that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
- A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of activities that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
- A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of activities that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
- Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
- For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, *i.e.*, presence, abundance, distribution, and/or density of species.
2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.* sound or visual stimuli), through better understanding of one or more of the following: The action itself and its environment (*e.g.*, sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.*, life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.*, age class of exposed animals or known pupping, calving, or feeding areas).
3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.*, at what distance or received level).
4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: The long-term fitness and survival of an individual; or the population, species, or stock (*e.g.*, through effects on annual rates of recruitment or survival).
5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.*, through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).
6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.
7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.
8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

Proposed Monitoring Measures

DONG Energy submitted a marine mammal monitoring and reporting plan as part of the IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Visual Monitoring—Visual monitoring of the established Level B harassment zones (400-m radius for sub-bottom profiler and 200-m radius for equipment positioning system use during HRG surveys [note that these are the same as the mitigation exclusion/shutdown zones established for HRG survey sound sources]; 3,500-m radius during DP thruster use [note that this is the same as the mitigation powerdown zone established for DP thruster sound sources]) will be performed by qualified and NMFS-approved PSOs (see discussion of PSO qualifications and requirements in *Marine Mammal Exclusion Zones* above).

The PSOs will begin observation of the monitoring zone during all HRG survey activities and all geotechnical operations where DP thrusters are employed. Observations of the monitoring zone will continue throughout the survey activity and/or while DP thrusters are in use. PSOs will be responsible for visually monitoring and identifying marine mammals approaching or entering the established monitoring zone during survey activities.

Observations will take place from the highest available vantage point on the survey vessel. General 360-degree scanning will occur during the monitoring periods, and target scanning by the PSO will occur when alerted of a marine mammal presence.

Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates and locations of construction operations; time of observation, location and weather; details of the sightings (*e.g.*, species, age classification [if known], numbers, behavior); and details of any observed "taking" (behavioral disturbances or injury/mortality). The data sheet will be provided to both NMFS and BOEM for review and approval prior to the start of survey activities. In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals. A briefing will also be conducted between the survey supervisors and crews, the PSOs, and the Applicant. The purpose of the briefing will be to establish responsibilities of each party, define the chains of command, discuss communication procedures, provide an overview of monitoring purposes, and review operational procedures.

Acoustic Field Verification — As per the requirements of the BOEM Lease, field verification of the exclusion/monitoring zones will be conducted to determine whether the proposed zones correspond accurately to the relevant isopleths and are adequate to minimize impacts to marine mammals. The details of the field verification strategy will be provided in a Field Verification Plan no later than 45 days prior to the commencement of field verification activities.

DONG Energy must conduct field verification of the exclusion zone (the 160 dB isopleth) for HRG survey equipment and the powerdown zone (the 120 dB isopleth) for DP thruster use for all equipment operating below 200 kHz. DONG Energy must take acoustic measurements at a minimum of two reference locations and in a manner that is sufficient to establish source level (peak at 1 meter) and distance to the 180 dB and 160 dB isopleths (the Level A and B harassment zones for HRG surveys) and 120 dB isopleth (the Level B harassment zone) for DP thruster use. Sound measurements must be taken at the reference locations at two depths (*i.e.*, a depth at mid-water and a depth at approximately 1 meter [3.28 ft] above the seafloor).

DONG Energy may use the results from its field-verification efforts to request modification of the exclusion/monitoring zones for the HRG or geotechnical surveys. Any new exclusion/monitoring zone radius proposed by DONG Energy must be based on the most conservative measurements (*i.e.*, the largest safety zone configuration) of the target Level A or Level B harassment acoustic threshold zones. The modified zone must be used for all subsequent use of field-verified equipment. DONG Energy must obtain approval from NMFS and BOEM of any new exclusion/monitoring zone before it may be implemented and the IHA shall be modified accordingly.

Proposed Reporting Measures

The Applicant will provide the following reports as necessary during survey activities:

- The Applicant will contact NMFS and BOEM within 24 hours of the commencement of survey activities and again within 24 hours of the completion of the activity.
- As per the BOEM Lease: Any observed significant behavioral reactions (*e.g.*, animals departing the area) or injury or mortality to any marine mammals must be reported to NMFS and BOEM within 24 hours of observation. Dead or injured protected species are reported to the NMFS Greater Atlantic Regional Fisheries Office Stranding Hotline (800–900–3622) within 24 hours of sighting, regardless of whether the injury is caused by a vessel. In addition, if the injury of death was caused by a collision with a project related vessel, the Applicant must ensure that NMFS and BOEM are notified of the strike within 24 hours. The Applicant must use the form included as Appendix A to Addendum C of the Lease to report the sighting or incident. If The Applicant is responsible for the injury or death, the vessel must assist with any salvage effort as requested by NMFS. Additional reporting requirements for injured or dead animals are described below (*Notification of Injured or Dead Marine Mammals*).
- *Notification of Injured or Dead Marine Mammals*—In the unanticipated event that the specified HRG and geotechnical activities lead to an injury of a marine mammal (Level A harassment) or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), DONG Energy would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the NOAA Greater Atlantic Regional Fisheries Office (GARFO) Stranding Coordinator. The report would include the following information:
- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the event. NMFS would work with DONG Energy to minimize reoccurrence of such an event in the future. DONG Energy would not resume activities until notified by NMFS.

In the event that DONG Energy discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition), DONG Energy would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the GARFO Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Applicant to determine if modifications in the activities are appropriate.

In the event that DONG Energy discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), DONG Energy would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Greater Atlantic Regional Fisheries Office Regional Stranding Coordinator, within 24 hours of the discovery. DONG Energy would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. DONG Energy can continue its operations under such a case.

- Within 90 days after completion of the marine site characterization survey activities, a technical report will be provided to NMFS and BOEM that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

- In addition to the Applicant's reporting requirements outlined above, the Applicant will provide an assessment report of the effectiveness of the various mitigation techniques, *i.e.*, visual observations during day and night, compared to the PAM detections/operations. This will be submitted as a draft to NMFS and BOEM 30 days after the completion of the HRG and geotechnical surveys and as a final version 60 days after completion of the surveys.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Project activities that have the potential to harass marine mammals, as defined by the MMPA, include underwater noise from operation of the HRG survey sub-bottom profilers and equipment positioning systems, and noise propagation associated with the use of DP thrusters during geotechnical survey activities that require the use of a DP drill ship. Harassment could take the form of temporary threshold shift, avoidance, or other changes in marine mammal behavior. NMFS anticipates that impacts to marine mammals would be in the form of behavioral harassment and no take by injury, serious injury, or mortality is proposed. NMFS does not anticipate take resulting from the movement of vessels associated with construction because there will be a limited number of vessels moving at slow speeds over a relatively shallow, nearshore area.

The basis for the take estimate is the number of marine mammals that would be exposed to sound levels in excess of NMFS' Level B harassment criteria for impulsive noise (160 dB re 1 µPa (rms) and continuous noise (120 dB re 1 µPa (rms.)). NMFS' current acoustic exposure criteria for estimating take are shown in Table 6 below. DONG Energy's modeled distances to these acoustic exposure criteria are shown in Tables 4 and 5. Details on the model characteristics and results are provided in the hydroacoustic modeling assessment found in Appendix A of the DONG Energy IHA application. As discussed in the application and in Appendix A, modeling took into consideration sound sources using the loudest potential operational parameters, bathymetry, geoacoustic properties of the Lease Area, time of year, and marine mammal hearing ranges. Results from the hydroacoustic modeling assessment showed that estimated maximum critical distance to the 160 dB re 1 µPa (rms) MMPA threshold for all water depths for the HRG survey sub-bottom profilers (the HRG survey equipment with the greatest potential for effect on marine mammal) was approximately 380 m from the source (see Table 4), and the estimated maximum critical distance to the 120 dB re 1 µPa (rms) MMPA threshold for all water depths for the drill ship DP thruster was approximately 3,400 m from the source (see Table 5). DONG Energy and NMFS believe that these estimates represent the worst-case scenario and that the actual distances to the Level B harassment threshold may be shorter.

TABLE 6—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Non-explosive sound		
Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 µPa-m (cetaceans)/190 dB re 1 µPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 µPa-m (rms).
Level B Harassment	Behavioral Disruption (for continuous noise)	120 dB re 1 µoPa-m (rms).

DONG Energy estimated species densities within the proposed project area in order to estimate the number of marine mammal exposures to sound levels above the 120 dB Level B harassment threshold for continuous noise (*i.e.*, DP thrusters) and the 160 dB Level B harassment threshold for intermittent, impulsive noise (*i.e.*, pingers and sub-bottom profiler). Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.*, Au *et al.*, 1988; Dolphin *et al.*, 1995; Supin and Popov, 1995; Mooney *et al.*, 2009b), especially for species with echolocation capabilities. Therefore, it is likely that marine mammals would perceive the acoustic signals associated with the HRG survey equipment as being intermittent rather than continuous, and we base our takes from these sources on exposures to the 160 dB threshold.

The data used as the basis for estimating species density ("D") for the Lease Area are sightings per unit effort (SPUE) taken from Kenney and Vigness-Raposa (2009). SPUE (or, the relative abundance of species) is derived by using a measure of survey effort and number of individual cetaceans sighted. Species density (animals per km^2) can be computed by dividing the SPUE value by the width of the marine mammal survey track, and numbers of animals can be computed by multiplying the species density by the size of the geographic area in question (km^2). SPUE allows for comparison between discrete units of time (*i.e.*, seasons) and space within a project area (Shoop and Kenney, 1992). SPUE calculated by Kenney and Vigness-Raposa (2009) was derived from a number of sources including: (1) North Atlantic Right Whale Consortium database; (2) CeTAP (CeTAP, 1982); (3) sightings data from the Coastal Research and Education Society of Long Island, Inc. and Okeanos Ocean Research Foundation; (4) the Northeast Regional Stranding network (marine mammals); and (5) the NOAA Northeast Fisheries Science Center's Fisheries Sampling Branch (Woods Hole, MA).

The Northeast Navy Operations Area (OPAREA) Density Estimates (DoN, 2007) were also used in support for estimating take for seals, which represents the only available comprehensive data for seal abundance. However, abundance estimates for the

Southern New England area includes breeding populations on Cape Cod, and therefore using this dataset alone will result in a substantial over-estimate of take in the Project Area. However, based on reports conducted by Kenney and Vigness-Raposa (2009), Schroeder (2000), and Ronald and Gots (2003), harbor seal abundance off the Southern New England coast in the vicinity of the survey is likely to be approximately 20 percent of the total abundance. In addition, because the seasonality of, and habitat use by, gray seals roughly overlaps with harbor seals, the same abundance assumption of 20 percent of the southern New England population of gray seals can be applied when estimating abundance. Per this data, take due to Level B harassment for harbor seals and gray seals has been calculated based on 20 percent of the Northeast Navy OPAREA Density Estimates.

Estimated takes were calculated by multiplying the species density (per 100 km²) by the zone of influence (ZOI), multiplied by the number of days of the specified activity. A detailed description of the acoustic modeling used to calculate zones of influence is provided in the acoustic modeling assessment found in Appendix A of the DONG Energy IHA application (also see the discussion in the "Mitigation" section above).

DONG Energy used a ZOI of 23.6 m² (61 km²) and a conservative survey period of 30 days, which includes estimated weather downtime, to estimate take from use of the HRG survey equipment during geophysical survey activities. The ZOI is based on the worst case (since it assumes the higher powered GeoSource 200 sparker will be operating all the time) ensonified area of 380 m, and a maximum survey trackline of 49 mi (79 km) per day. Based on the proposed HRG survey schedule (May 2016), take calculations were based on the spring seasonal species density as derived from seasonal SPUE data reported in Kenney and Vigness-Raposa (2009) and seasonal OPAREA density estimates (DoN, 2007). The resulting take estimates (rounded to the nearest whole number) are presented in Table 7.

TABLE 6—ESTIMATED LEVEL B HARASSMENT TAKES FOR HRG SURVEY ACTIVITIES

Species	Density for Spring (Number/100 km²)	Calculated take (Number)	Requested take authorization (Number)	Percentage of stock potentially affected
North Atlantic Right Whale	0.06	1.03	1	0.215
Humpback Whale	0.11	2.04	2	0.243
Fin Whale	0.37	6.72	7	0.433
Minke Whale	0.12	2.24	2	0.010
Common Dolphin	2.15	39.38	39	0.001
Atlantic White-sided Dolphin	1.23	22.45	22	0.045
Harbor Porpoise	0.47	8.52	9	0.011
Harbor Seal [1]	9.74	35.66	36	0.047
Gray Seal [1]	14.16	51.83	52	0.015

[1] Density values were derived using 20 percent of the number estimated from DoN (2007) density values.

DONG Energy used a ZOI of 9.8 m² (25.4 km²) and a maximum DP thruster use period of 6 days to estimate take from use of the DP thruster during geotechnical survey activities. The ZOI represents the worst-case ensonified area across the three representative water depths within the Lease Area (125 ft, 144 ft, and 177 ft [38 m, 44 m, and 54 m]). Based on the proposed geotechnical survey schedule (September 2016), take calculations were based on the fall seasonal species density as derived from seasonal abundance data reported in Kenney and Vigness-Raposa (2009) and seasonal OPAREA density estimates (DoN, 2007) (Table 7). The resulting take estimates (rounded to the nearest whole number) based upon these conservative assumptions for common and Atlantic white-sided dolphins are presented in Table 8. These numbers are based on 6 days and represent only 0.011 and 0.022 percent of the stock for these 2 species, respectively. Take calculations for North Atlantic right whale, humpback whale, fin whale, minke whale, harbor porpoise, gray seal, and harbor seal are at or near zero (refer to the DONG Energy application); therefore, no takes for these species are requested or proposed for authorization.

TABLE 7—ESTIMATED LEVEL B HARASSMENT TAKES FOR GEOTECHNICAL SURVEY ACTIVITIES

Species	Density for Fall (Number/100 km²)	Calculated take (Number)	Requested take authorization (Number)	Percentage of stock potentially affected
Common Dolphin	8.21	12.5	13	0.011
Atlantic White-sided Dolphin	7.46	11	11	0.022

DONG Energy's requested take numbers are provided in Tables 6 and 7 and this is also the number of takes NMFS is proposing to authorize. DONG Energy's calculations do not take into account whether a single animal is harassed multiple times or whether each exposure is a different animal. Therefore, the numbers in Tables 6 and 7 are the maximum number of animals that may be harassed during the HRG and geotechnical surveys (*i.e.*, DONG Energy assumes that each exposure event is a different animal). These estimates do not account for prescribed mitigation measures that DONG Energy would implement during the specified activities and the fact that shutdown/powerdown procedures shall be implemented if an animal enters the Level B harassment zone (160 dB and 120 dB for HRG survey equipment and DP thruster use, respectively), further reducing the potential for any takes to occur during these activities.

Analysis and Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination, as the severity of harassment may vary greatly depending on the context and duration of the behavioral response, many of which would not be expected to have deleterious impacts on the fitness of any individuals. In determining whether the expected takes will have a negligible impact, in addition to considering estimates of the number of marine mammals that might be "taken," NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and the status of the species.

As discussed in the "Potential Effects" section, permanent threshold shift, masking, non-auditory physical effects, and vessel strike are not expected to occur. There is some potential for limited TTS; however, animals in the area would likely incur no more than brief hearing impairment (*i.e.*, TTS) due to generally low SPLs—and in the case of the HRG survey equipment use, highly directional beam pattern, transient signals, and moving sound sources—and the fact that most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS or PTS. Further, once an area has been surveyed, it is not likely that it will be surveyed again, therefore reducing the likelihood of repeated impacts within the project area.

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). Marine mammal habitat may be impacted by elevated sound levels and some sediment disturbance, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.*, 1995). Prey species are mobile, and are broadly distributed throughout the Lease Area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Furthermore, there are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the proposed project area. A biologically important feeding area for North Atlantic right whale encompasses the Lease Area (LaBrecque, *et al.*, 2015); however, there is no temporal overlap between the BIA (effective March–April; November–December) and the proposed survey activities (May–June; October). ESA-listed species for which takes are proposed are North Atlantic right, humpback, and fin whales. Recent estimates of abundance indicate a stable or growing humpback whale population, while examination of the minimum number alive population index calculated from the individual sightings database for the years 1990–2010 suggests a positive and slowly accelerating trend in North Atlantic right whale population size (Waring *et al.*, 2015). There are currently insufficient data to determine population trends for fin whale) (Waring *et al.*, 2015). There is no designated critical habitat for any ESA-listed marine mammals within the Lease Area, and none of the stocks for non-listed species proposed to be taken are considered "depleted" or "strategic" by NMFS under the MMPA.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy; (2) reducing the intensity of exposure within a certain distance by reducing the DP thruster power; and (3) preventing animals from being exposed to sound levels reaching 180 dB during HRG survey activities (sound levels in excess of 180 dB are not anticipated for DP thruster use). Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit to and within the Study Area.

DONG Energy did not request, and NMFS is not proposing, take of marine mammals by injury, serious injury, or mortality. NMFS expects that most takes would be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating of the area, or decreased foraging (if such activity were occurring)—reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007). This is largely due to the short time scale of the proposed activities, the low source levels and intermittent nature of many of the technologies proposed to be used, as well as the required mitigation.

NMFS concludes that exposures to marine mammal species and stocks due to DONG Energy's HRG and geotechnical survey activities would result in only short-term (temporary and short in duration) and relatively infrequent effects to individuals exposed, and not of the type or severity that would be expected to be additive for the very small portion of the stocks and species likely to be exposed. Given the duration and intensity of the activities, and the fact that shipping contributes to the ambient sound levels in the surrounding waters (vessel traffic in this area is relatively high; some marine mammals may be habituated to this noise), NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success, are not expected.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from DONG Energy's proposed HRG survey and DP thruster use during geotechnical survey activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The requested takes proposed to be authorized for the HRG and geotechnical surveys represent 0.215 percent of the Western North Atlantic (WNA) stock of North Atlantic right whale, 0.243 percent of the Gulf of Maine stock of humpback whale, 0.433 percent of the WNA stock of fin whale, 0.010 percent of the Canadian East Coast stock of minke whale, 0.040 percent of the WNA stock of short-beaked common dolphin, 0.068 percent of the WNA stock of Atlantic white-sided dolphin, 0.011 percent of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, 0.047 percent of the WNA stock of harbor seal, and 0.015 percent of the North Atlantic stock of gray seal. These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment and are extremely small numbers (less than 1 percent) relative to the affected species or stock sizes. Further, the proposed take numbers are the maximum numbers of animals that are expected to be harassed during the project; it is possible that some of these exposures may occur to the same individual. Therefore, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Within the project area, fin, humpback, and North Atlantic right whale are listed as endangered under the ESA. Under section 7 of the ESA, BOEM consulted with NMFS on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NOAA's GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of fin whale, humpback whale, or North Atlantic right whale. NMFS is also consulting internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Following issuance of the DONG Energy IHA, the Biological Opinion may be amended to include an incidental take exemption for these marine mammal species, as appropriate.

National Environmental Policy Act

BOEM prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA), to evaluate the issuance of wind energy leases covering the entirety of the Massachusetts Wind Energy Area (including the OCS–A 0500 Lease Area), and the approval of site assessment activities within those leases (BOEM, 2014). NMFS intends to adopt BOEM's EA, if adequate and appropriate. Currently, we believe that the adoption of BOEM's EA will allow NMFS to meet its responsibilities under NEPA for the issuance of an IHA to DONG Energy for HRG and geotechnical survey investigations in the Lease Area. If necessary, however, NMFS will supplement the existing analysis to ensure that we comply with NEPA prior to the issuance of the final IHA. BOEM's EA is available on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm.*

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to DONG Energy for HRG survey activities and use of DP vessel thrusters during geotechnical survey activities from May 2016 through April 2017, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

DONG Energy Massachusetts (U.S.) LLC (DONG Energy) (One International Place, 100 Oliver Street, Suite 1400, Boston, MA 02110) is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107, to harass marine mammals incidental to high-resolution geophysical (HRG) and geotechnical survey investigations associated with marine site characterization activities off the coast of Massachusetts in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0500) (the Lease Area).

1. This Authorization is valid from May 1, 2016 through April 30, 2017.

2. This Authorization is valid only for HRG and geotechnical survey investigations associated with marine site characterization activities, as described in the Incidental Harassment Authorization (IHA) application.

3. The holder of this authorization (Holder) is hereby authorized to take, by Level B harassment only, 33 Atlantic white-sided dolphins (*Lagenorhynchus acutus*), 52 short-beaked common dolphins (*Delphinus delphis*), 9 harbor porpoises (*Phocoena phocoena*), 2 minke whales (*Balaenoptera acutorostrata*), 7 fin whales (*Balaenoptera physalus*), 2 humpback whales (*Megaptera novaeangliae*), 1 North Atlantic right whales (*Eubalaena glacialis*), 52 gray seals (*Halichoerus grypus*), and 36 harbor seals (*Phoca vitulina*) incidental to HRG survey activities using sub-bottom profilers and equipment positioning systems, and dynamic positioning (DP) vessel thruster use during geotechnical activities.

4. The taking of any marine mammal in a manner prohibited under this IHA must be reported immediately to NMFS' Greater Atlantic Regional Fisheries Office (GARFO), 55 Great Republic Drive, Gloucester, MA 01930–2276; phone 978–281–9300, and NMFS' Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910; phone 301–427–8401.

5. The Holder or designees must notify NMFS' GARFO and Headquarters at least 24 hours prior to the seasonal commencement of the specified activity (see contact information in 4 above).

6. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, or her designee at least 24 hours prior to the start of survey activities (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible) at 301–427–8401 or to *John.Fiorentino@noaa.gov.*

7. Mitigation Requirements

The Holder is required to abide by the following mitigation conditions listed in 7(a)–(f). Failure to comply with these conditions may result in the modification, suspension, or revocation of this IHA.

(a) *Marine Mammal Exclusion Zones:* Protected species observers (PSOs) shall monitor the following zones for the presence of marine mammals:

- A 400-m exclusion zone during HRG surveys when the sub-bottom profiler is in operation.
- A 200-m exclusion zone during HRG surveys when all other equipment (*i.e.,* equipment positioning systems) is in operation.
- A 3,500-m monitoring zone during the use of DP thrusters during geotechnical survey.
- At all times, the vessel operator shall maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below.

Visual monitoring of the established exclusion zone(s) shall be performed by qualified and NMFS-approved protected species observers (PSOs). An observer team comprising a minimum of four NMFS-approved PSOs and two certified Passive Acoustic Monitoring (PAM) operators, operating in shifts, shall be stationed aboard either the survey vessel or a dedicated PSO-vessel. PSOs shall be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Digital single-lens reflex camera equipment shall be used to record sightings and verify species identification. During night operations, PAM (see *Passive Acoustic Monitoring* requirements below) and night-vision equipment in combination with infrared video monitoring shall be used. The PSOs shall begin observation of the exclusion zone(s) at least 60 minutes prior to ramp-up of HRG survey equipment. Use of noise-producing equipment shall not begin until the exclusion zone is clear of all marine mammals for at least 60 minutes. If a marine mammal is seen approaching or entering the 200-m or 400-m exclusion zones during the HRG survey, or the 3,500-m monitoring zone during DP thrusters use, the vessel operator shall adhere to the shutdown/powerdown procedures described below to minimize noise impacts on the animals.

(b) *Ramp-Up:* A ramp-up procedure shall be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. The ramp-up procedure shall not be initiated during daytime, night time, or periods of inclement weather if the exclusion zone cannot be adequately monitored by the PSOs using the appropriate visual technology (*e.g.,* reticulated binoculars, night vision equipment) and/or PAM for a 60-minute period. A ramp-up shall begin with the power of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The power shall then be gradually turned up and other acoustic sources added such that the source level would increase in steps not exceeding 6 dB per 5-minute period. If marine mammals are sighted within the HRG survey exclusion zone prior to or during the ramp-up, activities shall be delayed until the animal(s) has moved outside the monitoring zone and no marine mammals are sighted for a period of 60 minutes.

(c) *Shutdown and Powerdown*

HRG Survey—The exclusion zone(s) around the noise-producing activities HRG survey equipment will be monitored, as previously described, by PSOs and at night by PAM operators for the presence of marine mammals before, during, and after any noise-producing activity. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. If a non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean is detected at or within the established exclusion zone (200-m exclusion zone during equipment positioning systems use; 400-m exclusion zone during the operation of the sub-bottom profiler), an immediate shutdown of the HRG survey equipment is required. Subsequent restart of the electromechanical survey equipment must use the ramp-up procedures described above and may only occur following clearance of the exclusion zone for 60 minutes. If a delphinoid cetacean or pinniped is detected at or within the exclusion zone, the HRG survey equipment must be powered down to the lowest power output that is technically feasible. Subsequent power up of the survey equipment must use the ramp-up procedures described above and may occur after (1) the exclusion zone is clear of a delphinoid cetacean and/or pinniped for 60 minutes or (2) a determination by the PSO after a minimum of 10 minutes of observation that the delphinoid cetacean or pinniped is approaching the vessel or towed equipment at a speed and vector that indicates voluntary approach to bow-ride or chase towed equipment. If the HRG sound source shuts down for reasons other than encroachment into the exclusion zone by a marine mammal including but not limited to a mechanical or electronic failure, resulting in in the cessation of sound source for a period greater than 20 minutes, a restart for the HRG survey equipment is required using the full ramp-up procedures and clearance of the exclusion zone of all cetaceans and pinnipeds for 60 minutes. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its operational level as long as visual surveys were continued diligently throughout the silent period and the exclusion zone remained clear of cetaceans and pinnipeds. If the visual surveys were not continued diligently during the pause of 20 minutes or less, a restart of the HRG survey equipment is required using the full ramp-up procedures and clearance of the exclusion zone for all cetaceans and pinnipeds for 60 minutes.

Geotechnical Survey (DP Thrusters)—During geotechnical survey activities if marine mammals enter or approach the established 120 dB isopleth monitoring zone, the Holder shall reduce DP thruster to the maximum extent possible, except under circumstances when reducing DP thruster use would compromise safety (both human health and environmental) and/or the integrity of the equipment. After decreasing thruster energy, PSOs shall continue to monitor marine mammal behavior and determine if the animal(s) is moving towards or away from the established monitoring zone. If the animal(s) continues to move towards the sound source then DP thruster use shall remain at the reduced level. Normal use shall resume when PSOs report that the marine mammals have moved away from and remained clear of the monitoring zone for a minimum of 60 minutes since the last sighting.

(d) *Vessel Strike Avoidance:* The Holder shall ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these protected species. Survey vessel crew members responsible for navigation duties shall receive site-specific training on marine mammal sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures shall include the following, except under extraordinary circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators shall comply with 10 knot (<18.5 km per hour [km/h]) speed restrictions in any Dynamic Management Area (DMA). In addition, all vessels operating from November 1 through July 31 shall operate at speeds of 10 knots (<18.5 km/h) or less.
- All survey vessels shall maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale.
- If underway, vessels must steer a course away from any sited North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 500 m minimum separation distance has been established. If a North Atlantic right whale is sited in a vessel's path, or within 100 m to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines shall not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m.
- All vessels shall maintain a separation distance of 100 m or greater

from any sighted non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel shall not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m.

- All vessels shall maintain a separation distance of 50 m or greater from any sighted delphinoid cetacean. Any vessel underway shall remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway shall reduce vessel speed to 10 knots or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or abeam of the underway vessel.
- All vessels shall maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

(e) *Seasonal Operating Requirements:* Between watch shifts members of the monitoring team shall consult the NMFS North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. The proposed survey activities shall occur outside of the seasonal management area (SMA) located off the coast of Massachusetts and Rhode Island and outside of the seasonal mandatory speed restriction period for this SMA (November 1 through April 30). Throughout all survey operations, the Holder shall monitor the NMFS North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS should establish a DMA in the Lease Area under survey, within 24 hours of the establishment of the DMA the Holder shall work with NMFS to shut down and/or altered the survey activities to avoid the DMA.

(f) *Passive Acoustic Monitoring:* To support 24-hour survey operations, the Holder shall include PAM as part of the project monitoring during the geophysical survey during nighttime operations, or as needed during periods when visual observations may be impaired. In addition, PAM systems shall be employed during daylight hours to support system calibration and PSO and PAM team coordination, as well as in support of efforts to evaluate the effectiveness of the various mitigation techniques (*i.e.,* visual observations during day and night, compared to the PAM detections/operations).

The PAM system shall consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 10 Hz to 30 kHz). The PAM operator(s) shall monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). PAM operators shall communicate detections/vocalizations to the Lead PSO on duty who shall ensure the implementation of the appropriate mitigation measure.

8. Monitoring Requirements

The Holder is required to abide by the following monitoring conditions listed in 8(a)–(b). Failure to comply with these conditions may result in the modification, suspension, or revocation of this IHA.

(a) *Visual Monitoring*—Protected species observers (refer to the PSO qualifications and requirements for *Marine Mammal Exclusion Zones* above) shall visually monitor the established Level B harassment zones (400-m radius during sub-bottom profiler use and 200-m radius for equipment positioning system use during HRG surveys; 3,500-m radius during DP thruster use). The observers shall be stationed on the highest available vantage point on the associated operating platform. PSOs shall estimate distance to marine mammals visually, using laser range finders or by using reticle binoculars during daylight hours. During night operations, PSOs shall use night-vision binoculars. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates and locations of survey operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age classification [if known], numbers, behavior); and details of any observed "taking" (behavioral disturbances or injury/mortality). In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals.

(b) *Acoustic Field Verification*—Field verification of the exclusion/monitoring zones shall be conducted to determine whether the proposed zones correspond accurately to the relevant isopleths and are adequate to minimize impacts to marine mammals. The Holder shall conduct field verification of the exclusion/monitoring zone (the 160 dB isolpleth) for HRG survey equipment and the monitoring/powerdown zone (the 120 dB isopleth) for DP thruster use for all equipment operating below 200 kHz. The Holder shall take acoustic measurements at a minimum of two reference locations and in a manner that is sufficient to establish source level (peak at 1 meter) and distance to the 180 dB and 160 dB isopleths (the Level A and B harassment zones for HRG surveys) and 120 dB isopleth (the Level B harassment zone) for DP thruster use. Sound measurements shall be taken at the reference locations at two depths (*i.e.,* a depth at mid-water and a depth at approximately 1 meter [3.28 ft] above the seafloor). The Holder may use the results from its field-verification efforts to request modification of the exclusion/monitoring zones for the HRG or geotechnical surveys. Any new exclusion/monitoring zone radius proposed by the Holder shall be based on the most conservative measurements (*i.e.,* the largest safety zone configuration) of the target Level A or Level B harassment acoustic threshold zones. The modified zone shall be used for all subsequent use of field-verified equipment. The Holder shall obtain approval from NMFS and BOEM of any new exclusion/monitoring zone before it may be implemented and the IHA shall be modified accordingly.

9. Reporting Requirements

The Holder shall provide the following reports as necessary during survey activities:

(a) The Holder shall contact NMFS (301–427–8401) and BOEM (703–787–1300) within 24 hours of the commencement of survey activities and again within 24 hours of the completion of the activity.

(b) Any observed significant behavioral reactions (*e.g.,* animals departing the area) or injury or mortality to any marine mammals shall be reported to NMFS and BOEM within 24 hours of observation. Dead or injured protected species shall be reported to the NMFS Greater Atlantic Regional Fisheries Office Stranding Hotline (800–900–3622) within 24 hours of sighting, regardless of whether the injury is caused by a vessel. In addition, if the injury of death was caused by a collision with a project related vessel, the Holder shall ensure that NMFS and BOEM are notified of the strike within 24 hours. The Holder shall use the form included as Appendix A to Addendum C of the Lease to report the sighting or incident. If the Holder is responsible for the injury or death, the vessel must assist with any salvage effort as requested by NMFS.

Additional reporting requirements for injured or dead animals are described below (*Notification of Injured or Dead Marine Mammals*).

(c) *Notification of Injured or Dead Marine Mammals*.

(i) In the unanticipated event that the specified HRG and geotechnical survey activities lead to an injury of a marine mammal (Level A harassment) or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), the Holder shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, 301–427–8401, and the NOAA Greater Atlantic Regional Fisheries Office (GARFO) Stranding Coordinator, 978–281–9300. The report shall include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the event. NMFS would work with the Holder to minimize reoccurrence of such an event in the future. The Holder shall not resume activities until notified by NMFS.

(ii) In the event that the Holder discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition), the Holder shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, 301–427–8401, and the GARFO Stranding Coordinator, 978–281–9300. The report shall include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Holder to determine if modifications in the activities are appropriate.

(iii) In the event that the Holder discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Holder shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, 301–427–8401, and the NMFS Greater Atlantic Regional Fisheries Office Regional Stranding Coordinator, 978–281–9300, within 24 hours of the discovery. The Holder shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting.

(d) Within 90 days after completion of the marine site characterization survey activities, a technical report shall be provided to NMFS and BOEM that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS shall be addressed in the final report prior to acceptance by NMFS.

(e) In addition to the Holder's reporting requirements outlined above, the Holder shall provide an assessment report of the effectiveness of the various mitigation techniques, *i.e.*, visual observations during day and night, compared to the PAM detections/operations. This shall be submitted as a draft to NMFS and BOEM 30 days after the completion of the HRG and geotechnical surveys and as a final version 60 days after completion of the surveys.

10. This Authorization may be modified, suspended, or withdrawn if the Holder fails to abide by the conditions prescribed herein or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

11. A copy of this Authorization and the Incidental Take Statement must be in the possession of each vessel operator taking marine mammals under the authority of this Incidental Harassment Authorization.

12. The Holder is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for DONG Energy's proposed high-resolution geophysical and geotechnical survey investigations associated with marine site characterization activities off the coast of Massachusetts in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0500). Please include with your comments any supporting data or literature citations to help inform our final decision on DONG Energy's request for an MMPA authorization.

Dated: March 30, 2016.

Wanda Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–07712 Filed 4–4–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE554

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow one commercial fishing vessel to fish outside of the limited access scallop regulations in support of research conducted by the National Fisheries Institute that is investigating scallop incidental mortality in the scallop dredge fishery.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 20, 2016.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: *nmfs.gar.efp@noaa.gov.* Include in the subject line "Comments on DA16–013 NFI Incidental Discard Mortality EFP."
- Mail: John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on DA16–013 NFI Incidental Discard Mortality EFP."
- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: NOAA awarded the National Fisheries Institute (NFI) a grant through the 2014 Atlantic sea scallop research set-aside program in support of a project titled, "Determining Incidental Discard Mortality of Atlantic Sea Scallops, *Placopecten magellanicus,* in the Scallop Dredge Fishery in the Mid-Atlantic Bight." NMFS issued the National Fisheries Institute (NFI) an Exempted Fishing Permit (EFP) on April 30, 2015, to complete the project. On February 16, 2016, NMFS received a request to authorize participating vessels to perform an additional 20 tows over the course of two limited access Atlantic sea scallop days-at-sea (DAS). NFI is requesting exemptions that would allow one commercial fishing vessel to fish outside of the DAS regulations found at 50 CFR 648.53(b); mesh size restrictions at § 648.51(a)(2); obstruction in dredge gear restrictions at § 648.51(b)(4)(iii); and the crew size regulations at § 648.51(c). In addition, the EFP would temporarily exempt the participating vessel from possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, for sampling purposes only. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

The project would conduct dredging activities to assess the incidental mortality of scallops passing through the 4-inch (10.16-cm) rings of a 12-foot (4.57-m) Turtle Deflector Dredge on sandy and hard (gravel) substrates. Dredging would be conducted over approximately two DAS during the proposed period of May 2016 through June 2016. All dredging would occur in open access scallop fishing areas off the coast of New Jersey. A total of 20 scallop tows would be conducted (10 tows per substrate). Each tow would be made at depths of 18 to 25 fathoms (32.92 to 45.72 m) for a duration of 40 minutes. The scallop vessel would fish two dredges simultaneously. One dredge would use an experimental net bag cover and the other would fish with an industry standard 12-foot (4.57-m) turtle excluder dredge. The experimental cover is constructed of 1⅞-inch (4.76-cm) mesh and sewn into the top of the dredge apron. The bag can be dumped independently of the 4-inch (10.16-cm) ring bag to collect the scallops and other organisms that pass through the 4-inch (10.16-cm) rings. The dredge configurations would be switched to the opposite side after five tows for each substrate.

All scallops that filter through the 4-inch (10.16-cm) rings and into the mesh bag would be measured for shell height and assessed for damage to the shell in one of three categories: Not injured; sub-lethal (repairable); or lethal (non-repairable). After all scallops are assessed, they would be returned to the ocean bottom as soon as practicable. The researchers would then use this information to estimate the proportion of scallops in each injury category. The weight of scallop catch retained in the 4-inch (10.16-cm) ring bags of both dredges would be estimated by the captain. Researchers would take shell measurements of a subsample of 50 scallops per tow per dredge to determine size selectivity within each dredge. All other bycatch in the experimental net bag would be sorted, the captain would estimate the weights, and researchers would measure a minimum of 25 lengths per individual species. No catch would be landed for sale.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07733 Filed 4–4–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE555

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow a commercial fishing vessel to fish outside of the limited access scallop regulations in support of research conducted by the Coonamessett Farm Foundation. The exemptions are in support of gear research designed to reduce flatfish bycatch in the limited access general category scallop fishery.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 20, 2016.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: *nmfs.gar.efp@noaa.gov.* Include in the subject line "CFF LAGC Modified Sweep EFP."
- Mail: John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on CFF LAGC Modified Sweep EFP."
- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: Coonamesset Farm Foundation (CFF) has submitted a proposal titled "Determining the Impacts of Dredge Bag Modifications on Flatfish Bycatch in the LAGC Scallop Fishery," that has been favorably reviewed and is pending final approval by NOAA's Grants Management Division under the 2016

Atlantic Sea Scallop Research Set-Aside (RSA) Program. The project would test a modified flounder cookie sweep on the outer bale bars of the scallop dredge that is used in the limited access general category (LAGC) scallop fishery and film fish-dredge interactions to monitor the effectiveness of the gear modification in reducing flatfish bycatch. CFF submitted a complete application for an EFP on March 14, 2016, to enable data collection activities during research trips. The EFP would allow one commercial fishing vessel to use gear that may be considered obstructed at 50 CFR 648.51(b)(4)(iii), waive scallop observer program requirements at § 648.11(g) in order allow a researcher with adequate room to sample catch on deck, and temporarily exempt the participating vessels from possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, for sampling purposes only. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited, including landing fish in excess of a possession limit or below the minimum size.

One vessel would conduct scallop dredging in June 2016-April 2017, on about 25 trips lasting approximately one day-at-sea (DAS) each for a project total of 25 DAS. The first trip would be comprised of shorter tow durations and serve as a calibration day for the underwater video equipment to determine the correct configuration on the dredge that would be used on each of the following trips. All other trips would complete approximately six tows per day for a maximum duration of 90 minutes at a tow speed of 4.2 knots. Trips would take place in the Southern New England Dredge Exemption Area where part of the LAGC fleet normally operates.

All tows would be conducted using a single 9-foot (2.74-m) dredge following an alternate paired tow strategy where a pair consists of one control and one experimental tow. Researchers would attach the two 6- to 7-foot (1.83- to 2.13-m) cookie sweeps to each of the outer bale bars using chain and shackles for the experimental tows and then remove them for the control tows. The cookie sweeps would be constructed of round rubber disks with no larger than a 3-inch (7.62-cm) diameter, and the attachment chains would be evenly spaced and varied in length to account for dredge position while being towed to ensure contact with the ocean bottom. Exemption from the dredge gear obstruction regulation would allow researchers to use the cookie sweep for the experimental tows.

Researchers would weigh all scallop catch in industry bushel baskets caught in both dredges and a one basket sub-sample from each dredge would be measured in 5-mm increments. Total weight of bycatch species and individual measurements to the nearest centimeter would also be obtained by the researcher. If the volume of the catch is large, subsampling protocols would be necessary. All bycatch would be returned to the sea as soon as practicable following data collection. Exemption from possession limit and minimum sizes would support catch sampling activities, and ensure the vessel is not in conflict with possession regulations while collecting catch data. All catch above a possession limit or below a minimum size would be discarded as soon as practicable following data collection. Exempting the vessel from the sea scallop observer program requirements would allow researchers flexibility for catch sampling timing and space accommodations since vessels in the LAGC fleet are typically smaller with limited deck space.

All research trips would otherwise be conducted in a manner consistent with normal commercial fishing conditions and catch consistent with the LAGC daily possession limit would be retained for sale.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07740 Filed 4–4–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before May 5, 2016.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs in OMB, within 30 days of publication of the notice, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0031. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0031, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to the Commission through its Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://reginfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Sonda R. Owens, Commodity Futures Trading Commission, (202) 418–5182; fax: (202) 418–5414; email: *sowens@cftc.gov* and refer to OMB Control No. 3038–0031.

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register**

notice with a 60-day comment period soliciting comments on this collection of information was published on December 15, 2015 (80 FR 77615).

Title: Procurement Contracts, OMB Control No. 3038–0031. This is a request for extension of a currently approved information collection.

Abstract: This information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

Burden statement: The respondent burden for this collection is estimated to average 2 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information. The numbers contained in this justification differ from those in the 60-day notice because of a revised estimate of the number of respondents.

Respondents/Affected Entities: 292.

Estimated number of responses (reporting): 778.

Estimated number of responses (recordkeeping): 778.

Estimated total annual burden on respondents: 1556 hours.

Frequency of collection: annually.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 31, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–07788 Filed 4–4–16; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Consumer Financial Protection Bureau (Bureau). The notice also describes the functions of the Council. Notice of the meeting is permitted by section 9 of the CBAC Charter and is intended to notify the public of this meeting. Specifically, section 9(d) of the CBAC Charter states:

> (1) Each meeting of the Council shall be open to public observation, to the extent that a facility is available to accommodate the public, unless the Bureau, in accordance with paragraph (4) of this section, determines that the meeting shall be closed. The Bureau also will make reasonable efforts to make the meetings available to the public through live recording. (2) Notice of the time, place and purpose of each meeting, as well as a summary of the proposed agenda, shall be published in the **Federal Register** not more than 45 or less than 15 days prior to the scheduled meeting date. Shorter notice may be given when the Bureau determines that the Council's business so requires; in such event, the public will be given notice at the earliest practicable time. (3) Minutes of meetings, records, reports, studies, and agenda of the Council shall be posted on the Bureau's Web site (*www.consumerfinance.gov*). (4) The Bureau may close to the public a portion of any meeting, for confidential discussion. If the Bureau closes a meeting or any portion of a meeting, the Bureau will issue, at least annually, a summary of the Council's activities during such closed meetings or portions of meetings.

DATES: The meeting date is Thursday, April 21, 3 p.m. to 4:30 p.m. eastern daylight time.

ADDRESSES: The meeting location is Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, Advisory Board and Councils Office, External Affairs, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at 202–435–9588. *CFPB_CABandCouncilsEvents@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides: "Pursuant to the executive and administrative powers conferred on the Consumer Financial Protection Bureau (CFPB or Bureau) by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Community Bank Advisory Council to consult with the Bureau in the exercise of its functions under the federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less."

Section 3 of the CBAC Charter states: ("a) The CFPB supervises depository institutions and credit unions with total assets of more than $10 billion and their respective affiliates, but other than the limited authority conferred by § 1026 of the Dodd-Frank Act, the CFPB does not have supervisory authority regarding credit unions and depository institutions with total assets of $10 billion or less. As a result, the CFPB does not have regular contact with these institutions, and it would therefore be beneficial to create a mechanism to ensure that their unique perspectives are shared with the Bureau. Small Business Regulatory Enforcement Fairness Act (SBREFA) panels provide one avenue to gather this input, but participants from community banks must possess no more than $175 million in assets, which precludes the participation of many. (b) The Advisory Council shall fill this gap by providing an interactive dialogue and exchange of ideas and experiences between community bankers and Bureau staff. (c) The Advisory Council shall advise generally on the Bureau's regulation of consumer financial products or services and other topics assigned to it by the Director. To carry out the Advisory Council's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The output of Advisory Council meetings should serve to better inform the CFPB's policy development, rulemaking, and engagement functions."

II. Agenda

The Community Bank Advisory Council will discuss the CFPB strategic outlook and elder financial abuse.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Individuals who wish to attend the Community Bank Advisory Council meeting must RSVP to *cfpb_cabandcouncilsevents@cfpb.gov* by noon, Wednesday, April 20, 2016. Members of the public must RSVP by the due date and must include "CBAC" in the subject line of the RSVP.

III. Availability

The Council's agenda will be made available to the public on Wednesday, April 6, 2016, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the CFPB's Web site *consumerfinance.gov.*

Dated: March 31, 2016.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2016–07814 Filed 4–4–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Defense Business Board. This meeting is open to the public.

DATES: The public meeting of the Defense Business Board ("the Board") will be held on Thursday, April 21, 2016. The meeting will begin at 9:00 a.m. and end at 11:40 a.m. (Escort required; see guidance in the **SUPPLEMENTARY INFORMATION** section, "Public's Accessibility to the Meeting.")

ADDRESSES: Room 3E863 in the Pentagon, Washington, DC (Escort required; See guidance in the **SUPPLEMENTARY INFORMATION** section, "Public's Accessibility to the Meeting.")

FOR FURTHER INFORMATION CONTACT: The Board's Designated Federal Officer (DFO) is Roma Laster, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *roma.k.laster.civ@mail.mil,* 703–695–7563. For meeting information please contact Steven Cruddas, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *steven.m.cruddas.civ@mail.mil,* (703) 697–2168. For submitting written comments or questions to the Board, send via email to mailbox address: *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Please include in the Subject line "DBB April 2016 Meeting."

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140.

Purpose of the Meeting: The Board will receive presentations from its task groups on *"Evaluation of Position of Under Secretary of Defense for Business Management and Information;" "Real Property Management;"* and *"Selection of Senior Officials in the Acquisition Workforce."*

The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to the DoD.

Availability of Materials for the Meeting: A copy of the agenda and the terms of reference for each Task Group study may be obtained from the Board's Web site at *http://dbb.defense.gov/meetings.* Copies will also be available at the meeting.

Meeting Agenda:

9:00 a.m.–9:05 a.m.—Opening remarks
9:05 a.m.–11:05 a.m.—Task Group presentations on *"Evaluation of Position of Under Secretary of Defense for Business Management and Information;" "Real Property Management;"* and *"Selection of Senior Officials in the Acquisition Workforce."*
11:05 a.m.–11:15 a.m.—Public Comments (if time permits)
11:15 a.m.–11:30 a.m.—Board Deliberations
11:30 a.m.–11:40 a.m.—Future Work

Submission of written public comments is strongly encouraged, due to meeting time constraints.

Public's Accessibility to the Meeting: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Steven Cruddas at the number listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 12:00 p.m. on Friday, April 15, 2016 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Visitor's Center, located near the Pentagon Metro Station's south exit (the escalators to the left upon exiting through the turnstiles) and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 8:30 a.m. on April 21. Note: Pentagon tour groups are accepted at the Visitor's Center beginning at 9:00 a.m. so lines may form well in advance. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Steven Cruddas at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of FACA, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public meeting.

Written comments should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the email address for public comments given in the **FOR FURTHER INFORMATION CONTACT** section in either Adobe Acrobat or Microsoft Word format. Please include in the Subject line "DBB April 2016 Meeting." Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations will be treated as public documents and may be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated: March 31, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–07777 Filed 4–4–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0013]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; 2016–17 Baccalaureate and Beyond Longitudinal Study (B&B:16/17) Field Test Data Collection

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before May 5, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0013. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov*.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2016–17 Baccalaureate and Beyond Longitudinal Study (B&B:16/17) Field Test Data Collection.

OMB Control Number: 1850–0729.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 4,417.

Total Estimated Number of Annual Burden Hours: 977.

Abstract: This request is for the National Center for Education Statistics (NCES) to conduct a field test of the 2016/17 Baccalaureate and Beyond Longitudinal Study (B&B:16/17). The B&B studies of the education, work, financial, and personal experiences of individuals who have completed a bachelor's degree at a given point in time are a series of longitudinal studies. Every 8 years, students are identified as bachelor's degree recipients through the National Postsecondary Student Aid Study (NPSAS). B&B:16/17 is the first follow-up of a panel of baccalaureate degree recipients identified in the 2015–16 NPSAS, and part of the fourth cohort (B&B:16) of the B&B series. The primary purposes of the B&B studies are to describe the post-baccalaureate paths of new college graduates, with a focus on their experiences in the labor market and post-baccalaureate education, and their education-related debt. B&B also focuses on the continuing education paths of science, technology, engineering, and mathematics (STEM) graduates, as well as the experiences of those who have begun careers in education of students through the 12th grade. Since graduating from college in 2014–15 for the field test, and 2015–16 for the full-scale study, members of this B&B:16 cohort will begin moving into and out of the workforce, enrolling in additional undergraduate and graduate education, forming families, and repaying undergraduate education-related debt. Documenting these choices and pathways, along with individual, institutional, and employment characteristics that may be related to those choices, provides critical information on the costs and benefits of a bachelor's degree in today's workforce. B&B studies include both traditional-age and non-traditional-age college graduates, whose education options and choices often diverge considerably, and allow study of the paths taken by these different graduates. The results of this field test will inform the B&B:16/17 full-scale data collection.

Dated: March 31, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2016–07699 Filed 4–4–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0033]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Native American Career and Technical Education Program Application (1894–0001)

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 5, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0033. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Braden Goetz, 202–245–7405.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork

Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Native American Career and Technical Education Program Application (1894–0001).

OMB Control Number: 1830–0542.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 31.

Total Estimated Number of Annual Burden Hours: 1,240.

Abstract: This information collection solicits applications for the Native American Career and Technical Education Program. The collection request includes a notice inviting applications and an accompanying application package that set out the selection criteria used to assess the quality of applications, establish the Government Performance and Results Act indicators on which grantees must report, and require grantees to support an independent evaluation of their project.

Dated: March 30, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–07650 Filed 4–4–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Office of Undersecretary, U.S. Department of Education, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda for the April 18, 2016, meeting of the President's Board of Advisors on Historically Black Colleges and Universities (PBA) and provides information to members of the public on submitting written comments and on the process as to how to request time to make oral comments at the meeting. The notice also describes the functions of the Board. Notice of the meeting is required by § 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: The PBA meeting will be held on April 18, 2016, from 9 a.m. to 3:00 p.m. E.D.T. at NASA Research & Education Support Services, 2345 Crystal Drive, Suite 500 in Arlington, Virginia 22202.

ADDRESSES: U.S. Department of Education, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Sedika Franklin, Associate Director, U.S. Department of Education, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW., Washington, DC 20204; telephone: (202) 453–5634 or (202) 453–5630, fax: (202) 453–5632, or email *sedika.franklin@ed.gov.*

SUPPLEMENTARY INFORMATION: *PBA's Statutory Authority and Function:* The President's Board of Advisors on Historically Black Colleges and Universities (the Board) is established by Executive Order 13532 (February 26, 2010) and continued by Executive Order 13708 which was signed by the President on September 30, 2015. The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub.L 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and (v) encouraging public-private investments in HBCUs.

Meeting Agenda: In addition to its review of activities prior to April 18, 2016, the meeting agenda will include Chairman William R. Harvey's report on HBCU issues and concerns; Executive Director, Ivory A. Toldson will provide an update on current priorities of the White House Initiative on HBCUs to include planning strategies and initiatives; Ted Mitchell, Under Secretary of the U.S. Department of Education has been invited to provide an update on education policies relevant to HBCUs; and Chairman Harvey and Executive Director Toldson will lead a conversation regarding how the Board will complete its work as the Administration draws to a close and Chairman Harvey will open the floor for subcommittee reports (Black Males, Strategy, Science Technology Engineering and Mathematics (STEM), Community Colleges and Aspirational Support) and for the full Board to receive and vote on recommendations from each subcommittee. Oral comments will begin immediately following the conclusion of subcommittee reports.

Submission of requests to make an oral comment: There are two methods the public may use to make an oral comment at the April 18, 2016 meeting.

Method One: Submit a request by email to the *whirsvps@ed.gov* mailbox. Please do not send materials directly to PBA members. Requests must be received by April 11, 2016. Include in the subject line of the email request "Oral Comment Request: (Organization name)." The email must include the name(s), title, organization/affiliation, mailing address, email address, telephone number, of the person(s) requesting to speak, and a brief summary (not to exceed one page) of the principal points to be made during the oral presentation. All individuals submitting an advance request in accordance with this notice will be afforded an opportunity to speak for three minutes.

Method Two: Register at the meeting location on April 18, 2016, to make an oral comment during the PBA's deliberations concerning Historically Black Colleges and Universities. The requestor must provide his or her name, title, organization/affiliation, mailing address, email address, and telephone number. Individuals will be selected on a first-come, first-served basis. If selected, each commenter will have an opportunity to speak for three minutes.

All oral comments made will become part of the official record of the Board. Similarly, written materials distributed during oral presentations will become part of the official record of the meeting.

Submission of written public comments: The Board invites written comments, which will be read during the Public Comment segment of the agenda. Comments must be received by April 11, 2016, in the *whirsvps@ed.gov* mailbox, include in the subject line "Written Comments: Public Comment". The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Please do not send material directly to the PBA members.

Access to Records of the Meeting: The Department will post the official report of the meeting on the PBA Web site 90 days after the meeting. Pursuant to the Federal Advisory Committee Act (FACA), the public may also inspect the materials at 400 Maryland Avenue SW., Washington, DC, by emailing *oswhi-hbcu@ed.gov* or by calling (202) 453–5634 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Presidential Executive Order 13532, continued by Executive Order 13708.

Ted Mitchell,

Under Secretary.

[FR Doc. 2016–07675 Filed 4–4–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0040]

Agency Information Collection Activities; Comment Request; NCES System Clearance for Cognitive, Pilot, and Field Test Studies

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 6, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0040. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: NCES System Clearance for Cognitive, Pilot, and Field Test Studies.

OMB Control Number: 1850–0803.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 405,000.

Total Estimated Number of Annual Burden Hours: 81,000.

Abstract: This is a request for a 3-year renewal of the generic clearance to allow the National Center for Education Statistics (NCES) to continue to develop, test, and improve its survey and assessment instruments and methodologies. The procedures utilized to this effect include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2016–07708 Filed 4–4–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0035]

Agency Information Collection Activities; Comment Request; Accrediting Agencies Reporting Activities for Institutions and Programs

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 6, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0035. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Herman Bounds, 202–453–6128.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Accrediting Agencies Reporting Activities for Institutions and Programs.

OMB Control Number: 1840–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 76.

Total Estimated Number of Annual Burden Hours: 200.

Abstract: The Secretary of Education is authorized by 34 CFR part 602 to recognize accrediting agencies to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit. Federal regulations (34 CFR 602.26) outline information that accrediting agencies must report to the Department of Education on a timely basis in order to support the Department's oversight role, including information on accreditation actions taken with regard to institutions and programs. The proposed information collection will clarify the categories of actions taken by accreditors, the reporting required or requested on those actions, and the format for submitting the information.

The proposed information collection includes two items—a letter and an Excel spreadsheet. The Accreditor Letter on Terminology and Reporting is a draft of a letter the Department plans to send to accrediting agencies to clarify the information those agencies should submit to the Department. The excel spreadsheet is the mechanism through which the Department proposes agencies submit the information. Agencies are invited to review both items and provide comment to improve their clarity and usefulness. The Department will consider public comment and make revisions as necessary before issuing final versions.

This data is required to demonstrate compliance with criteria at 34 CFR part 602; State agencies for the approval of vocational education to demonstrate compliance with the criteria at 34 CFR part 603; State agencies for the approval of nurse education to demonstrate compliance with the criteria published in the 1969 **Federal Register** notice; foreign medical accrediting entities in accordance with criteria 34 CFR 600.55; and criteria established by Department staff to evaluate foreign veterinary accrediting organizations in accordance with 34 CFR 600.56.

Dated: March 31, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–07701 Filed 4–4–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Public Meeting To Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities

AGENCY: Fuel Cycle Technologies, Office of Nuclear Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The U.S Department of Energy (DOE) is implementing a consent-based siting process to establish an integrated waste management system to transport, store, and dispose of spent nuclear fuel and high-level radioactive waste. In a consent-based siting approach, DOE will work with communities, tribal governments and states across the country that express interest in hosting any of the facilities identified as part of an integrated waste management system. As part of this process, the Department is hosting a series of public meetings to engage communities and individuals and discuss the development of a consent-based approach to managing our nation's nuclear waste. A public meeting will be held in Minneapolis on July 21, 2016.

DATES: The meeting will take place on Thursday, July 21, 2016 from 5:00 p.m.

to 9:30 p.m. CDT. Informal poster sessions will be held from 4:00 p.m. until 5:00 p.m. CDT and again after 9:30 p.m. CDT. Department officials will be available to discuss consent-based siting during the poster sessions.

ADDRESSES: The meeting will be held at Hilton Minneapolis, 1001 Marquette Avenue, Minneapolis, MN 55403. To register for this meeting and to review the agenda for the meeting, please go to *energy.gov/consentbasedsiting.*

FOR FURTHER INFORMATION CONTACT: Requests for further information should be sent to *consentbasedsiting@hq.doe.gov* or to Michael Reim at 202–586–2981. Updated information on this and other planned public meetings on consent based siting will be posted at *energy.gov/consentbasedsiting.*

If you are unable to attend a public meeting or would like to further discuss ideas for consent-based siting, please request an opportunity for us to speak with you. The Department will do its best to accommodate such requests and help arrange additional opportunities to engage. To learn more about nuclear energy, nuclear waste, and ongoing technical work please go to *energy.gov/consentbasedsiting.*

Privacy Act: Data collected via the mechanisms listed above will not be protected from the public view in any way.

Issued in Washington, DC on March 29, 2016.

Jay Jones,

Acting Associate Deputy Assistant Secretary, Office of Nuclear Energy, Department of Energy.

[FR Doc. 2016–07739 Filed 4–4–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Surplus Plutonium Disposition

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Record of Decision.

SUMMARY: On May 8, 2015, the U.S. Environmental Protection Agency (EPA) issued a **Federal Register** notice (80 FR 26559) announcing the availability of the Department of Energy/National Nuclear Security Administration's (DOE/NNSA's) *Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (Final SPD Supplemental EIS) (DOE/EIS–0283–S2, April 2015). Among the proposed actions considered in the Final SPD Supplemental EIS, DOE/NNSA analyzed the potential environmental impacts of alternatives for the disposition of 13.1 metric tons (MT) (14.4 tons) of surplus plutonium for which a disposition path is not assigned, including 7.1 MT (7.8 tons) of surplus pit plutonium and 6 MT (6.6 tons) of surplus non-pit plutonium. At the time the Final SPD Supplemental EIS was issued, DOE/NNSA did not have a Preferred Alternative for any of the proposed actions considered in the Final SPD Supplemental EIS. Subsequently, on December 24, 2015, DOE/NNSA issued a **Federal Register** notice (80 FR 80348) identifying the Preferred Alternative for disposition of the 6 MT of surplus non-pit plutonium analyzed in the Final SPD Supplemental EIS. In its **Federal Register** notice, DOE/NNSA announced that its Preferred Alternative is to prepare 6 MT of surplus non–pit plutonium for disposal at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico, a geologic repository for disposal of transuranic (TRU) waste generated by atomic energy defense activities.

DOE/NNSA is announcing a decision to implement its Preferred Alternative for the disposition of 6 MT of surplus non-pit plutonium, as described in DOE/NNSA's *Preferred Alternative for Certain Quantities of Plutonium Evaluated in the Final Surplus Plutonium Disposition Supplemental EIS.* Shipments of this surplus non-pit plutonium to WIPP, after it is operational,[1] will be placed in the queue of waste to be shipped to WIPP. This plutonium will be prepared and packaged to meet the WIPP waste acceptance criteria for contact-handled TRU waste and other applicable regulatory requirements.

The scope of DOE/NNSA's current decision pertains only to the 6 MT of surplus non-pit plutonium that is a subset of the 13.1 MT of surplus plutonium considered in the Final SPD Supplemental EIS. DOE/NNSA does not have a preferred alternative and is not making any decisions, at the present time, for other alternatives considered in the Final SPD Supplemental EIS. These other alternatives include alternatives for the disposition of 7.1 MT of surplus pit plutonium for which a disposition path is not assigned and various options for providing the capability to disassemble surplus pits and convert the plutonium from pits into a form suitable for disposition.

Additionally, DOE/NNSA reaffirms its commitment to the *Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Needed for Defense Purposes* (Plutonium Management and Disposition Agreement or PMDA), which calls for the United States and the Russian Federation to each dispose of at least 34 MT (37.5 tons) of weapon-grade plutonium withdrawn from nuclear weapon programs. DOE/NNSA's previous decisions related to surplus plutonium disposition, including copies of the applicable **Federal Register** notices, may be found in Appendix A of the Final SPD Supplemental EIS.

FOR FURTHER INFORMATION CONTACT: For further information on the surplus plutonium disposition program, please contact Ms. Sachiko W. McAlhany, National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy at *spdsupplementaleis@leidos.com.*

For information on DOE's NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0103; Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

This Record of Decision, the Final SPD Supplemental EIS, and related NEPA documents are available at *http://nnsa.energy.gov/nepa/spdsupplementaleis* and *http://energy.gov/nepa/nepa-documents.*

SUPPLEMENTARY INFORMATION:

Background

DOE/NNSA's purpose and need for action remains as stated in the 1999 *SPD EIS* (DOE/EIS–0283, November 1999) to reduce the threat of nuclear weapons proliferation worldwide by conducting disposition of surplus plutonium in the United States in an environmentally safe and timely manner, ensuring that it can never again be readily used in nuclear weapons.

Based on a series of NEPA reviews beginning with the *SPD EIS* and described in Appendix A, Section A.1, of the Final SPD Supplemental EIS, DOE/NNSA has determined disposition paths for most of the current U.S. inventory of surplus, weapons-usable plutonium; however, 13.1 MT of surplus weapons-usable plutonium (7.1 MT of pit plutonium and 6 MT of non-pit plutonium) did not have an assigned disposition path. DOE/NNSA prepared the SPD Supplemental EIS to evaluate alternatives for disposition of this 13.1 MT of surplus plutonium.

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[1] DOE suspended disposal activities at WIPP in February 2014 following a salt truck fire and unrelated radiological event underground. Waste emplacement operations at WIPP are expected to commence in late 2016.

Alternatives Considered

In the Final SPD Supplemental EIS, DOE/NNSA analyzed the potential environmental impacts for the No Action Alternative and four action alternatives for disposition of 13.1 MT of surplus plutonium that do not have a disposition path assigned, of which the 6 MT of non-pit plutonium is a subset. These four alternatives are: (1) Immobilization at SRS (Immobilization to Defense Waste Processing Facility [DWPF] Alternative); (2) fabrication into mixed oxide (MOX) fuel at SRS with subsequent irradiation in one or more domestic commercial nuclear power reactors (MOX Fuel Alternative); (3) vitrification with high-level radioactive waste (HLW) at SRS (H-Canyon/HB-Line and DWPF Alternative); and, (4) potential disposal as contact-handled transuranic (CH–TRU) waste at WIPP (WIPP Disposal Alternative). These alternatives are composed of a combination of pit disassembly and conversion options and plutonium disposition options. The plutonium disposition options that are applicable to the 6 MT of surplus non-pit plutonium are described in Section S.9.2 of the Final SPD Supplemental EIS (DOE/EIS–0283–S2, April 2015). For the Final SPD Supplemental EIS, the scope of analysis for the WIPP Disposal Alternative was increased, in response to public comment, to include the full 13.1 MT of surplus plutonium for which a disposition path is not assigned. In the Draft SPD Supplemental EIS, the scope of analysis for the WIPP Disposal Alternative was limited to 6 MT of surplus non-pit plutonium (described in Section S.8.2.4 of DOE/EIS–0283–S2, July 2012). The disposition decision announced today addresses 6 MT of surplus, weapons-usable, non-pit plutonium, not the entire 13.1 MT of surplus plutonium analyzed in the Final SPD Supplemental EIS.

Within each action alternative, DOE/NNSA evaluated options to disassemble nuclear weapons pits and convert the plutonium metal to an oxide form for disposition. DOE/NNSA has not identified a Preferred Alternative for the disposition of the remaining 7.1 MT of surplus plutonium (surplus pit plutonium) for which a disposition path has not been assigned, or for any option(s) for providing the capability to disassemble surplus pits and convert the plutonium from pits to a form suitable for disposition. Once DOE/NNSA identifies a Preferred Alternative for the remaining 7.1 MT of surplus pit plutonium and/or the disassembly and conversion options, DOE/NNSA will announce its preference in a **Federal Register** notice and publish a Record of Decision no sooner than 30 days after its announcement of a Preferred Alternative.

Preferred Alternative

As announced on December 24, 2015, in a **Federal Register** notice (80 FR 80348), DOE/NNSA's Preferred Alternative with regard to the 6 MT of surplus non-pit plutonium is to prepare this plutonium for disposal at WIPP near Carlsbad, New Mexico, a geologic repository for disposal of TRU waste generated by atomic energy defense activities. This would allow DOE/NNSA to continue progress on the disposition of surplus weapons-usable plutonium in furtherance of the policies of the United States to ensure that surplus plutonium is never again readily used in a nuclear weapon, and to remove surplus plutonium from the Savannah River Site (SRS) in the State of South Carolina. Surplus non-pit plutonium would be prepared and packaged at SRS using H-Canyon/HB-Line and/or K-Area facilities to meet the WIPP waste acceptance criteria and all other applicable regulatory requirements. Shipments of this surplus plutonium to WIPP, after it is operational, will be placed in the queue of waste to be shipped to WIPP.

Environmentally Preferable Alternative

After considering the potential impacts on each resource area, DOE/NNSA identified the No Action Alternative as the environmentally preferable alternative in the near-term, for the 6 MT of surplus non-pit plutonium evaluated in the Final SPD Supplemental EIS and that is the subject of this Record of Decision. Under the No Action Alternative, the 6 MT of surplus non-pit plutonium would be stored at the K-Area Complex at SRS, consistent with the 2002 *Amended Record of Decision: Surplus Plutonium Disposition Program* (67 FR 19432); the *Supplement Analysis, Storage of Surplus Plutonium Materials at the Savannah River Site* (DOE/EIS–0229–SA–4) and an amended Record of Decision issued in 2007 (72 FR 51807). No new facilities would be constructed and no processing for disposal or off-site transportation of this material would take place with the exception of a small amount of plutonium required for the material surveillance program. Surveillance activities would be performed on the plutonium and plutonium packages, including destructive and non-destructive examinations, to ensure safe storage (DOE/EA–1538, *Revised Finding of No Significant Impact for Safeguards and Security Upgrades for Storage of Materials at the Savannah River Site* dated December 2005, and Interim Action Determinations approved in December 2008, September 2009, and March 2011). Although the No Action Alternative is the environmentally preferable alternative, this alternative would not result in the disposition of the 6 MT of surplus non-pit plutonium.

Potential Environmental Impacts of Preferred Alternative

For each alternative, the SPD Supplemental EIS analyzed the potential impacts on air quality, human health, socioeconomics, waste management, transportation, environmental justice, land resources, geology and soils, water resources, noise, ecological resources, cultural resources, and infrastructure. DOE/NNSA also evaluated the potential impacts of the irreversible and irretrievable commitment of resources, the short-term uses of the environment, and the maintenance and enhancement of long-term productivity. These analyses and results for the entire 13.1 MT of surplus plutonium are described in the Summary and Chapter 4 of the Final SPD Supplemental EIS. Table S–3 of the Final SPD Supplemental EIS Summary provides a summary of potential environmental impacts associated with each alternative as well as a means for comparing the potential impacts among alternatives.

In the Draft SPD Supplemental EIS, the scope of analysis for the WIPP Disposal Alternative was limited to 6 MT of surplus non-pit plutonium (described in Section S.8.2.4 of DOE/EIS–0283–S2, July 2012). The analyses and results for the disposition of 6 MT can be found in the Summary, Chapter 4, and Appendix G "Impacts of Plutonium Disposition Options" of the Draft SPD Supplemental EIS.

In identifying its Preferred Alternative for disposition of 6 MT of surplus non-pit plutonium and making the decision announced in this Record of Decision, DOE/NNSA considered the potential environmental impacts that would result from operations conducted at SRS to prepare and package this quantity (6 MT) of material for disposition at WIPP, those related to transporting the material from SRS to WIPP, and disposal at WIPP. Implementing the WIPP Disposal Alternative relies on existing facilities, structures and pads at SRS to prepare the surplus non-pit plutonium for disposal. This would reduce the potential for additional land disturbance, and reduce the need for additional deactivation and decommissioning in the future. Some staging of packages at E-Area at SRS prior to shipping may be required. This would result in negligible incremental impacts on both workers and the public. The pace of environmental restoration activities at SRS, as well as the requirements for environmental monitoring and protection at SRS and WIPP, would generally remain unchanged from current levels.

The potential impacts from transporting surplus plutonium to WIPP are also addressed in the Final SPD Supplemental EIS. The Final SPD Supplemental EIS indicated that under all alternatives (including the WIPP Disposal Alternative) no latent cancer fatalities are expected in the general public along the transportation routes and in the transportation crews due to incident-free transport of radioactive wastes and materials from SRS. The potential environmental impacts of TRU waste disposal at WIPP are evaluated in the *Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement* (WIPP SEIS–II) (DOE/EIS–0026–S–2, September 1997) and subsequent Supplement Analyses from 2005 (DOE/EIS–0026–SA–05) and 2009 (DOE/EIS–0026–SA–07) and are briefly described in Appendix A, Section A.2, of the Final SPD Supplemental EIS.

Public Involvement

Since the announcement of the first notice of intent to prepare the SPD Supplemental EIS in 2007 (72 FR 14543), DOE/NNSA has provided three scoping periods during which DOE/NNSA held public scoping meetings and actively solicited scoping comments from Federal agencies, state and local governmental entities, American Indian tribal governments, and members of the public. The public scoping periods extended from March 28, 2007 through May 29, 2007; July 19, 2010 through September 17, 2010; and January 12, 2012 through March 12, 2012. Meetings were held in Aiken, Columbia, and North Augusta, South Carolina; Tanner, Alabama; Chattanooga, Tennessee; and Carlsbad, Santa Fe, Espanola, and Pojoaque, New Mexico.

On July 27, 2012, EPA and DOE/NNSA published notices in the **Federal Register** announcing the availability of the Draft SPD Supplemental EIS (77 FR 44234 and 77 FR 44222, respectively). A 60-day comment period was provided from July 27 to September 25, 2012. In response to public requests, DOE/NNSA extended the public comment period by 15 days through October 10, 2012. During the public comment period, DOE/NNSA held seven public hearings to provide interested members of the public with opportunities to learn more about the content of the Draft SPD Supplemental EIS, to hear DOE/NNSA representatives present the results of the Draft SPD Supplemental EIS analyses, to ask questions; and to provide oral and/or written comments. The hearings were held in Los Alamos, Santa Fe, Carlsbad, and Espanola, New Mexico; North Augusta, South Carolina; Chattanooga, Tennessee; and Tanner, Alabama.

DOE/NNSA received 432 comment documents containing approximately 1,050 comments during the comment period for the Draft SPD Supplemental EIS. DOE/NNSA responded to these comments in the Comment Response Document, Volume 3, of the Final SPD Supplemental EIS.

Comments on the Final SPD Supplemental EIS and Preferred Alternative

DOE/NNSA distributed the Final SPD Supplemental EIS to Congressional members and committees; State and local governments; other Federal agencies, culturally affiliated American Indian tribal governments, non-governmental organizations, and other stakeholders including members of the public who requested the document. Also, the Final SPD Supplemental EIS was made available via the Internet.

On December 24, 2015, DOE/NNSA announced its Preferred Alternative in the *Preferred Alternative for Certain Quantities of Plutonium Evaluated in the Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (80 FR 80348) with regard to the 6 MT of non-pit plutonium. DOE/NNSA considered all comments received on the Final SPD Supplemental EIS and the Preferred Alternative and concluded that those comments do not identify a need for further NEPA analysis. The Appendix to this Record of Decision summarizes DOE/NNSA's consideration of these comments.

Decision

DOE/NNSA has decided to implement its Preferred Alternative as described in DOE/NNSA's *Preferred Alternative for Certain Quantities of Plutonium Evaluated in the Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (80 FR 80348) with regard to the disposition of 6 MT of surplus, weapons-usable, non-pit plutonium; DOE/NNSA's Preferred Alternative is to prepare that plutonium for disposal at WIPP near Carlsbad, New Mexico, a geologic repository for disposal of TRU waste generated by atomic energy defense activities. All practicable means to avoid or minimize environmental harm for the decision identified have been adopted.

Under this alternative, the non-pit plutonium will be prepared for disposal in facilities at HB-Line or K-Area at SRS for disposal at WIPP. The non-pit plutonium containers will be opened in an existing glovebox or newly-constructed glovebox capability in HB-Line or K-Area. Plutonium metal will be converted to oxide. Plutonium oxide will be repackaged into suitable containers, mixed/blended with inert material and loaded into pipe overpack containers (POCs) or criticality control overpacks (CCOs). (DOE/NNSA plans to move toward the use of the CCO containers in lieu of the POC to maximize the amount of plutonium that can be packaged in each container, thereby reducing the number of shipments and volume emplaced at WIPP.) The inert material will be added to inhibit plutonium recovery. Loaded POCs or CCOs will be characterized for WIPP disposal in E-Area at SRS including non-destructive assay, digital radiography, and headspace gas sampling. Waste packages containing surplus plutonium that have been successfully characterized and meet the WIPP waste acceptance criteria will be placed in the queue of waste to be shipped to WIPP after WIPP is operational. The packages will be shipped to WIPP in TRUPACT–II or HalfPACT shipping containers

Unirradiated Fast Flux Test Facility (FFTF) reactor fuel is included in this 6 MT of non-pit plutonium. If the FFTF fuel cannot be disposed of by direct disposal at WIPP, it will be disassembled at SRS and packaged for disposal at WIPP. H-Canyon at SRS will be used to disassemble the fuel bundles, remove the pellets from the fuel pins, and package the pellets into suitable containers. HB-Line or K-Area will be used to prepare and mix/blend the fuel pellet material with inert material, then package it for shipment to WIPP.

Disposition decisions announced in this Record of Decision address only the 6 MT of surplus non-pit plutonium. DOE/NNSA has no Preferred Alternative at this time for the disposition of the remaining 7.1 MT of surplus plutonium from pits for which a disposition pathway has not been assigned, or for the capability to disassemble surplus pits and convert the plutonium from pits to a form suitable for disposition. Once a Preferred Alternative is identified, DOE/NNSA will announce its preference in a **Federal Register** notice and publish a Record of Decision no sooner than 30 days after its announcement of a Preferred Alternative.

Basis for Decision

In making its decision, DOE/NNSA considered potential environmental impacts of construction and operations, current and future mission needs, technical and security considerations, availability of resources, and public comments on the Draft and Final SPD Supplemental EIS, and the notice of Preferred Alternative. Implementing the WIPP Disposal Alternative for disposition of 6 MT of surplus non-pit plutonium allows DOE/NNSA to take advantage of existing facilities, infrastructure and expertise at SRS and WIPP. The decision builds on the existing capabilities, infrastructure, and skilled workforce trained in safe operation of nuclear facilities. Environmental impacts and costs (DOE (U.S. Department of Energy) *Report of the Plutonium Disposition Working Group: Analysis of Surplus Weapon-Grade Plutonium Disposition Options*, Washington, DC, April 2014) would be less than some of the other alternatives that would require the construction of new facilities. In addition, DOE/NNSA will make use of existing facilities, resulting in efficient use of the facilities. Blending for disposal at WIPP is a proven process that is ongoing at SRS for disposition of plutonium material from the DOE–STD–3013 surveillance process and other non-pit plutonium. In addition, disposal of this surplus non-pit plutonium will avoid long-term impacts, risks, and costs associated with storage.

DOE/NNSA also considered acceptability of the surplus non-pit plutonium at WIPP and WIPP's performance in making this decision. DOE has previously disposed of similar surplus plutonium at WIPP from SRS, the Rocky Flats Environmental Technology Site, and the Hanford Site (the Rocky Flats and Hanford materials were packaged and shipped directly from those sites). As was the case for previous SRS activities requiring the processing of surplus plutonium for disposal at WIPP, the surplus plutonium identified in this decision will be packaged to meet the WIPP waste acceptance criteria and all applicable regulatory requirements. Compliance with the WIPP waste acceptance criteria is one factor that will help ensure that any TRU waste emplaced in WIPP will not exceed the 40 CFR part 191 performance standards and will meet other applicable requirements. Additionally, the WIPP TRU waste inventory—which includes radionuclide activity—is revised annually and reviewed by DOE for compliance. DOE's currently projected WIPP TRU waste inventory with the addition of the 6 MT of surplus non-pit plutonium suggests that WIPP would continue to comply with 40 CFR 191. These projections from the TRU Waste Inventory and other information are submitted every five years to the EPA, as part of the Compliance Recertification Application, under 40 CFR part 194, *Criteria for the Certification and Re-Certification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR part 191 Disposal Regulations*. Following issuance of this ROD, the 6 MT of surplus non-pit plutonium will be reflected in the TRU Waste Inventory and inform the next compliance re-certification application to be submitted to EPA in 2019.

Implementing the Preferred Alternative will allow the DOE/NNSA to continue its progress on the disposition of surplus weapon-usable plutonium in furtherance of the policies of the United States to ensure that surplus plutonium is never again readily used in a nuclear weapon, and to remove surplus plutonium from the State of South Carolina.

Mitigation Measures

SRS facility operations would result in airborne emissions of various pollutants, including radionuclides, and organic and inorganic constituents. These emissions would continue to be controlled using Best Available Control Technology to ensure that emissions are compliant with applicable standards. Impacts would be controlled by use of glovebox confinement, packaging as applicable, building confinement and air filtration systems to remove radioactive particulates before discharging process exhaust air to the atmosphere, and internal scrubbers to reduce chemical gas concentrations. Occupational safety risks to workers would be limited by adherence to Federal and state laws; Occupational Safety and Health Administration regulations; DOE/NNSA requirements including regulations and orders; and plans and procedures for performing work. DOE/NNSA facility operations adhere to programs to ensure the reduction of human health and safety impacts. Workers are protected from specific hazards by use of engineering and administrative controls, use of personal protective equipment, and monitoring and training. The Radiological Protection Program limits impacts by ensuring that radiological exposures and doses to all personnel are maintained As Low As Reasonably Achievable (ALARA) and by providing job specific instructions to the facility workers regarding the use of personal protective equipment. The Emergency Preparedness Program mitigates potential accident consequences by ensuring that appropriate organizations are available to respond to emergency situations and take appropriate actions to recover from accident events, while reducing the spread of contamination and protecting facility personnel and the public.

Issued at Washington, DC on March 29, 2016.

Frank G. Klotz,

Administrator, National Nuclear Security Administration.

Appendix: Public Comments Received on the *Final SPD Supplemental EIS* and the *Preferred Alternative for Certain Quantities of Plutonium Evaluated in the Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement*

DOE/NNSA received eight letters and emails regarding the *Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (Final SPD Supplemental EIS) (DOE/EIS–0283–S2, April 2015) (80 FR 26559) and *Preferred Alternative for Certain Quantities of Plutonium Evaluated in the Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (80 FR 80348). DOE/NNSA considered all comments contained in the letters and emails. Some of the comments included issues already raised during the comment period for the *Draft Surplus Plutonium Disposition Supplemental Environmental Impact Statement.* All prior comments submitted on the Draft SPD Supplemental EIS and DOE/NNSA responses to those comments have been published in the Final SPD Supplemental EIS, Volume 3, *Comment Response Document,* and are not being revisited.

In announcing its Preferred Alternative for the disposition of 6 MT of surplus non-pit plutonium, DOE/NNSA stated that it had no Preferred Alternative for other potential actions considered in the Final SPD Supplemental EIS. Specifically, DOE/NNSA stated that it had no Preferred Alternative for the disposition of the remaining 7.1 MT of surplus plutonium from pits and that it did not have a Preferred Alternative among the pathways analyzed for providing the capability to disassemble surplus pits and convert the plutonium from pits to a form suitable for disposition. Further, some of the comments were beyond the scope of the Final SPD Supplemental EIS. DOE/NNSA did not address such comments.

DOE/NNSA received comments on the Final SPD Supplemental EIS and the notice of Preferred Alternative from The Governing Body of the City of Carlsbad, New Mexico; Shelly Wilson, Permitting and Federal Facilities Liaison of the South Carolina Department of Health and Environmental Control; Rick McLeod, Executive Director of the Savannah River Site Community Reuse

Organization; Tom Clements of Savannah River Site Watch; Edwin Lyman and Frank von Hippel of the Union of Concerned Scientists; Andrew Kadak; Michael High; and Don Hancock of Southwest Research and Information Center. The topics below summarize the concerns expressed within those comments and provides DOE/NNSA's responses.

Topic A—National Environmental Policy Act Compliance: Commentors were concerned that analyses of the potential environmental impacts of processing, packaging, and disposal of surplus non-pit plutonium, which could include some quantity of "gap" plutonium retrieved from foreign countries, had not been performed as required by the National Environmental Policy Act (NEPA) and new or supplemental EISs should be prepared. A commentor also stated that in March 2015, President Obama authorized DOE to pursue a defense high level radioactive waste (HLW) repository; therefore, it is a reasonable alternative for defense surplus plutonium that must be considered, but is not included in the Storage and Disposition PEIS, nor the Draft or Final SPD Supplemental EIS.

Discussion: DOE believes sufficient information exists, including NEPA documentation, to support a Record of Decision for the disposition of 6 MT of surplus non-pit plutonium for which a disposition path was not assigned. DOE has completed appropriate tiered NEPA analyses related to the Surplus Plutonium Disposition program including the *Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement* (Storage and Disposition PEIS) (DOE/EIS–0229) in 1996, *Surplus Plutonium Disposition Environmental Impact Statement* (SPD EIS) (DOE–EIS–0283) in 1999, and *Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (SPD Supplemental EIS) (DOE/EIS–0283–S2) in 2015.

DOE/NNSA's need to store and disposition surplus plutonium, in accordance with U.S. nonproliferation and export control policies in a safe, reliable, cost effective and timely manner, has not changed since the Storage and Disposition PEIS was prepared in 1996. DOE/NNSA did, however, become aware of new circumstances and information relevant to the 1999 SPD EIS that did warrant re-examination of some of the analyses provided in that NEPA document.

Consequently, the SPD Supplemental EIS was prepared in accordance with applicable Council on Environmental Quality and DOE NEPA regulations to examine the potential environmental impacts of reasonable alternatives for the disposition of 13.1 MT of surplus plutonium for which a disposition path was not assigned, including 6 MT of surplus non-pit plutonium. The SPD Supplemental EIS also analyzed options to provide the appropriate capability to disassemble surplus pits and convert surplus plutonium to a form suitable for disposition. In preparing the Final SPD Supplemental EIS, DOE/NNSA considered the analyses in the related NEPA documents identified above. The Final SPD Supplemental EIS addresses all of the relevant issues and analysis related to the proposed action and updates the analyses where necessary.

Appropriate NEPA analyses exist for processing 6 MT of surplus non-pit plutonium at SRS and transportation and disposal of the resulting CH–TRU waste at WIPP, near Carlsbad, New Mexico, a geologic repository for disposal of TRU waste generated by atomic energy defense activities. Chapter 4 and Appendix G of the SPD Supplemental EIS, describe the potential environmental impacts of plutonium disposition options, including preparing surplus non-pit plutonium at facilities at SRS for disposal at WIPP. Appendix E of the SPD Supplemental EIS, describes the potential environmental impacts of transportation of surplus plutonium for disposal at WIPP. Section 4.5.3.6.3, of the *Final SPD Supplemental EIS* describes the capacity and ability of WIPP to accept 13.1 MT of surplus plutonium as analyzed under the WIPP Disposal Alternative in the Final SPD Supplemental EIS. The potential environmental impacts of TRU waste disposal at WIPP are evaluated in the *Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement* (*WIPP SEIS–II*) (DOE/EIS–0026–S2, September 1997) and subsequent Supplement Analyses from 2005 (DOE/EIS–0026–SA–05) and 2009 (DOE/EIS–0026–SA–07). Also, see *Topic B—WIPP Capacity,* and *Topic C—WIPP Acceptance,* for further discussion of these topics.

Certain plutonium recovered from foreign sources may have originated from atomic energy defense activities. Up to 0.9 MT of such plutonium may be included in the 6 MT of surplus non-pit plutonium discussed in Chapter 1, Section 1.5.2 of the Final SPD Supplemental EIS in the event that the plutonium from foreign sources is received at SRS. Thus, the potential environmental impacts from the processing and disposition of surplus plutonium recovered from foreign countries, also referred to as "gap material plutonium", through NNSA's Global Threat Reduction Initiative are evaluated in the SPD Supplemental EIS. NEPA analysis for the transportation, receipt, and processing of gap material plutonium in preparation for disposition is provided in DOE/NNSA's *Environmental Assessment for the U.S. Receipt and Storage of Gap Material Plutonium* (DOE/EA–1771) May 2010 [2] and DOE/NNSA's *Environmental Assessment for Gap Material Plutonium—Transport, Receipt, and Processing* (Gap Material Plutonium EA) (DOE/EA–2024), December 2015. DOE determined that the potential environmental impacts of implementing the proposed action are not significant, and in May 2010 and December 2015, issued Findings of No Significant Impact.

In President Obama's March 24, 2015, "*Presidential Memorandum—Disposal of Defense High-Level Radioactive Waste in a Separate Repository*" to the Secretary of Energy, President Obama found, in accordance with Section 8 of the Nuclear Waste Policy Act of 1982, that "the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required." DOE is now authorized to move forward with planning for a separate repository for HLW resulting from atomic energy defense activities. At present, no site has been identified or proposed and no funds have been appropriated for designing, constructing and operating such a repository.

Topic B—The Blending Process and Implementing the Preferred Alternative at SRS: Commentors expressed concern that many hurdles would remain affecting DOE/NNSA's ability to carry out this decision once the ROD is issued. Commentors also expressed the view that no additional surplus plutonium should be received at SRS until surplus plutonium currently in storage at SRS is removed from the State of South Carolina. Commentors requested information about facilities and infrastructure for blending and packaging the 6 MT of surplus non-pit plutonium at SRS, a description of the processes to be used in blending and packaging and the schedule for processing and shipping to WIPP.

Discussion: As described in this Record of Decision, DOE/NNSA has decided to prepare 6 MT of surplus non-pit plutonium for disposal at WIPP. This would allow the DOE/NNSA to continue progress on the disposition of surplus weapon-usable plutonium in furtherance of the policies of the United States to ensure that surplus plutonium is never again readily used in a nuclear weapon, and to remove surplus plutonium from the State of South Carolina.

This Record of Decision summarizes how DOE/NNSA intends to prepare the 6 MT of surplus non-pit plutonium for disposition at WIPP. For additional information, Chapter 2, Section 2.2.4, and Appendix B, Section B.1.3, of the Final SPD Supplemental EIS describe how plutonium would be blended with inert materials and packaged at SRS. Blending these types of materials for disposal at WIPP is a proven process that is ongoing at SRS for disposition of plutonium material from the DOE–STD–3013 surveillance process and other non-pit plutonium. Implementing the WIPP Disposal Alternative for this surplus non-pit plutonium relies on existing SRS facilities (with additional glovebox capability in an existing facility), structures, and pads to prepare the material for disposal. Surplus non-pit plutonium would be prepared and packaged at SRS using H-Canyon/HB-line and/or K-Area Complex facilities and would be temporarily stored in E-Area at SRS until shipped to WIPP. DOE/NNSA's assumptions associated with the schedule for equipping and operating facilities at SRS are described in Table B–2 in the *Final SPD Supplemental EIS.*

This Record of Decision identifies DOE/NNSA's intent to place the 6 MT of non-pit plutonium in POCs or CCOs for disposition following its conversion to plutonium oxide and blending with inert materials. (DOE/NNSA plans to move toward the use of the CCO containers in lieu of the POC to maximize the amount of plutonium that can be packaged in each container, thereby reducing the number of shipments and volume emplaced at WIPP.) For additional information, see Chapter 2, Section 2.2.4, and Appendix B, Section B.3, of the *SPD Supplemental EIS* which describe the POC and CCO containers that would be used for disposal of surplus plutonium at WIPP.

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[2] While this EA is for Official Use Only, the Finding of No Significant Impact can be viewed on the DOE NEPA Web site (*http://energy.gov/nepa/downloads/ea-1771-finding-no-significant-impact*).

The details of the inert materials with which plutonium would be blended and applicable safeguards for the plutonium are classified or official use only. The termination of safeguards process is part of DOE/NNSA's Material Control and Accountability Program and is outside the scope of the Final SPD Supplemental EIS and this Record of Decision.

A schedule for shipment of the 6 MT of plutonium to WIPP has not been established (limited waste emplacement operations at WIPP are expected to commence in late 2016). Shipments of this surplus non-pit plutonium to WIPP, after it is operational, will placed in the queue of waste to be shipped to WIPP.

Topic C—WIPP Capacity: Commentors were concerned that the WIPP unsubscribed capacity had been incorrectly calculated and that the available volume is less than the volume described in the SPD Supplemental EIS; thus, the disposition of 6 MT of surplus non-pit plutonium could not be accomplished within the unsubscribed capacity of WIPP.

Discussion: The WIPP Land Withdrawal Act establishes a total WIPP capacity for TRU waste disposal of 175,600 cubic meters (6.2 million cubic feet). Chapter 4, Section 4.5.3.6.3, of the Final SPD Supplemental EIS describes the capacity and ability of WIPP to accept 13.1 MT of surplus plutonium as analyzed under the WIPP Disposal Alternative. This analysis considered past and projected disposal amounts at WIPP of TRU waste from across the DOE complex and as a result of these considerations, an unsubscribed disposal capacity of 24,700 cubic meters (872,000 cubic feet) of CH–TRU waste was assumed for purposes of analysis in the Final SPD Supplemental EIS.

The estimate of unsubscribed disposal capacity in the Final SPD Supplemental EIS was made using DOE's Annual Transuranic Waste Inventory Report for 2012. The TRU waste volumes reported in the Annual Transuranic Waste Inventory Reports are based on final (containerized) TRU waste forms. Projections from the Annual Transuranic Waste Inventory Reports for 2014 and 2015, suggests that although TRU waste disposal projections vary somewhat from year to year, the information in these documents would not change the conclusions reached in the Final SPD Supplemental EIS.

All of the TRU waste projected from the activities addressed in the Final SPD Supplemental EIS is expected to be CH–TRU waste. As indicated in Chapter 4, Section 4.5.3.6.3 of the *Draft SPD Supplemental EIS*, disposal of 6 MT of surplus non-pit plutonium at is estimated to result in 15,000 to 17,000 cubic meters of CH–TRU waste, using pipe overpack containers (POCs) for packaging the 6 MT of surplus non-pit plutonium. These estimated volumes can be substantially reduced if criticality control overpacks (CCOs) are used for packaging the surplus plutonium for WIPP disposal rather than the assumed POCs and the unirradiated Fast Flux Test Facility (FFTF) fuel is disposed of by direct disposal at WIPP. (If the FFTF fuel cannot be disposed of by direct disposal at WIPP, it will be disassembled at SRS and packaged for disposal at WIPP.)

The WIPP underground is composed of disposal rooms or "panels" mined from the salt beds. Disposal panels at WIPP can be enlarged and/or additional panels can be created to accommodate the 175,600 cubic meters (6.2 million cubic feet) of TRU waste allowed under the WIPP Land Withdrawal Act. Future waste disposal at WIPP could involve new disposal panels that could be larger (with more capacity per panel) or more numerous than the 10 panels that were included in the nominal conceptual design of the WIPP underground that one of the commentors references.

Topic D—WIPP Acceptance: Commentors requested information on the process and procedures for acceptance of drums containing surplus plutonium at WIPP. In addition, commentors were concerned that disposal of 6 MT of surplus non-pit plutonium at WIPP exceeds previously evaluated amounts of plutonium increasing criticality risk, and that it exceeds plutonium amounts included in previous Compliance Certification Applications to the U. S. Environmental Protection Agency (EPA).

Discussion: The process and procedures for acceptance of surplus plutonium blended with inert materials are the same as the process and procedures for acceptance of any CH–TRU waste at WIPP as described in *Transuranic Waste Acceptance Criteria for the Waste Isolation Pilot Plant* (DOE/WIPP–02–3122). As required by DOE Order 420.1, *Facility Safety,* criticality was considered in the *Waste Isolation Pilot Plant Documented Safety Analysis* (DOE/WIPP 07–3372, November 2013) and determined to be an "incredible event" at WIPP.

DOE has previously disposed of similar surplus plutonium at WIPP from SRS, the Rocky Flats Environmental Technology Site, and the Hanford Site; the Rocky Flats and Hanford materials were packaged and shipped directly from those sites (*Los Alamos National Laboratory Carlsbad Operations Performance Assessment Inventory Report 2012,* INV–PA–12, Revision 0). As was the case for previous SRS activities requiring the processing of surplus plutonium for disposal at WIPP, the surplus plutonium identified in this decision will be packaged to meet the WIPP waste acceptance criteria and all applicable regulatory requirements.

As described above, there are statutory limits on the total volume of TRU waste that may be disposed of at WIPP. There are also statutory limits on the total curies of remote-handled TRU waste, but there are no statutory limits on the total curies of CH–TRU waste, such as the 6 MT of surplus non-pit plutonium. The regulations at 40 CFR part 191, subparts B and C, *Environmental Standards for Disposal* and *Environmental Standards for Ground-Water Protection,* applicable to WIPP, provide release limits to the accessible environment and the regulations in Subpart B require reasonable expectation that the individual protection (dose) standard will be met for 10,000 years after disposal, based on a performance assessment and other applicable information, which takes into account the potential release of radionuclides to the accessible environment from the TRU Waste Inventory emplaced and projected to be emplaced in WIPP. The TRU waste inventory—which includes radionuclide activity—is revised annually and reviewed by DOE for compliance. DOE's projections of its TRU waste inventory with the addition of the 6 MT of surplus non-pit plutonium suggest that WIPP would continue to comply with applicable 40 CFR part 191 requirements. These projections from the TRU Waste Inventory Report and other information are submitted every five years to EPA, as part of the Compliance Recertification Application, under 40 CFR part 194, *Criteria for the Certification and Re-Certification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR part 191 Disposal Regulations.* Following issuance of this Record of Decision, the 6 MT of surplus non-pit plutonium will be reflected in the TRU Waste Inventory Report and inform the next re-certification application to be submitted to EPA in 2019.

The WIPP waste acceptance criteria help ensure, with an appropriate margin, that any TRU waste emplaced in WIPP will not exceed the 40 CFR part 191 performance standards and will meet other applicable requirements. The 6 MT of surplus non-pit plutonium will be packaged to meet the WIPP waste acceptance criteria, thereby providing further assurance that the additional inventory will not challenge the 40 CFR part 191 repository performance standards.

During the disposal phase of WIPP repository operations, criticality is controlled by the packaging requirements imposed by the waste acceptance criteria. As required by DOE Order 420.1, *Facility Safety,* criticality was considered in the *Waste Isolation Pilot Plant Documented Safety Analysis* (DOE/WIPP 07–3372) and determined to be an "incredible event" at WIPP. Furthermore, in 2000, Sandia National Laboratories was commissioned to conduct a conservative analysis of the possibility of a criticality event over the required 10,000-year performance period for WIPP. In *Consideration of Nuclear Criticality When Disposing of Transuranic Waste at the Waste Isolation Pilot Plant* (SAN 099–2898), Sandia National Laboratories concluded that criticality is not a credible event. The analysis evaluated conditions within the WIPP repository itself including the possibility of a criticality event in adjacent geologic media into which fissile material could be assumed to migrate.

Topic E—Consideration of the February 2014 Incidents and Restart of Operations at WIPP: Commentors were concerned that the WIPP operational history and the February 2014 incidents were not considered in developing the Final SPD Supplemental EIS and this Record of Decision.

Discussion: The "Foreword" of the Final SPD Supplemental EIS includes information on the February 2014 incidents at WIPP. DOE has considered WIPP"s performance in making this decision to send 6 MT of surplus plutonium to WIPP for disposal. A schedule for shipment of the 6 MT of surplus non-pit plutonium to WIPP has not been established. Shipments of this surplus non-pit plutonium to WIPP, after it is operational, will be placed in the queue of waste to be shipped to WIPP. DOE anticipates resuming limited waste disposal operations at WIPP in 2016 when it is safe to do so. Significant improvements are being implemented to enhance the safety environment at WIPP including enhancements to fire suppression and unground ventilation and improvements in underground stability. DOE provides regular updates and detailed information on the status of recovery activities at WIPP on the WIPP Web site (*http://www.wipp.energy.gov/wipprecovery/recovery.html*). These safety changes and improvements are being implemented regardless of the decision to dispose of 6 MT of surplus plutonium at WIPP.

Topic F—Cost: Commentors were concerned about the cost of the surplus plutonium disposition alternatives and that adequate funding be provided such that DOE can move forward with disposition of the 6 MT of surplus non-pit plutonium at WIPP.

Discussion: As described in this Record of Decision, DOE/NNSA has decided to prepare 6 MT of surplus non-pit plutonium for disposal at WIPP. This would allow the DOE/NNSA to continue progress on the disposition of surplus weapon-usable plutonium in furtherance of the policies of the United States to ensure that surplus plutonium is never again readily used in a nuclear weapon, and to remove surplus plutonium from the State of South Carolina. Scheduling and implementation of surplus plutonium disposition activities are subject to the availability of funds as appropriated by Congress.

With respect to cost considerations, implementing the WIPP Disposal Alternative for the disposition of 6 MT of surplus non-pit plutonium would rely on existing facilities (with additional glovebox capability in an existing facility), structures, and pads, and when compared to the other alternatives evaluated in the *SPD Supplemental EIS,* would reduce the potential need for constructing and equipping additional facilities, and consequently reduce the need for future facility deactivation and decommissioning at SRS. Blending with inert materials for disposal at WIPP is a proven process that is ongoing at SRS for disposition of plutonium material from the DOE–STD–3013 surveillance process and other non-pit plutonium.

[FR Doc. 2016–07738 Filed 4–4–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 27, 2016 8:00 a.m.–2:30 p.m.

The opportunity for public comment is at 10:40 a.m. and 2:15 p.m.

This time is subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 1741 Harrison Street N., Twin Falls, ID 83301.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or email: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.gov/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Recent Public Involvement
- Idaho Cleanup Project Overview
- Update on Integrated Waste Treatment Unit (IWTU)
- Department of Environmental Quality Report
- U.S. Geological Survey Groundwater Report
- Organic Contamination in the Vadose Zone Rebound Report/Results
- Annual Environmental Monitoring
- Environmental Permitting
- EM SSAB Chairs Meeting Report

Public Participation: The EM SSAB, Idaho National Laboratory, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://inlcab.energy.gov/pages/meetings.php.*

Issued at Washington, DC, on March 30, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–07734 Filed 4–4–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 27, 2016; 1:00 p.m.–4:00 p.m.

ADDRESSES: NNMCAB Office, 94 Cities of Gold Road, Santa Fe, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring and Remediation Committee (EM&R): The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda:

- Call to Order and Introductions
- Approval of Agenda
- Approval of Minutes from March 9, 2016
- Old Business
- New Business
- Update from DOE
- Presentation: Impact/Monitoring of the Buckman Direct Diversion
- Public Comment Period
- Adjourn

Public Participation: The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://energy.gov/em/nnmcab/northern-new-mexico-citizens-advisory-board.*

Issued at Washington, DC, on March 30, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–07735 Filed 4–4–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Public Meeting To Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities

AGENCY: Fuel Cycle Technologies, Office of Nuclear Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The U.S Department of Energy (DOE) is implementing a consent-based siting process to establish an integrated waste management system to transport, store, and dispose of spent nuclear fuel and high-level radioactive waste. In a consent-based siting approach, DOE will work with communities, tribal governments and states across the country that express interest in hosting any of the facilities identified as part of an integrated waste management system. As part of this process, the Department is hosting a series of public meetings to engage communities and individuals and discuss the development of a consent-based approach to managing our nation's nuclear waste. A public meeting will be held in Boise ID on July 14, 2016.

DATES: The meeting will take place on Thursday, July 14, 2016 from 5:00 p.m. to 9:30 p.m. MDT. Informal poster sessions will be held from 4:00 p.m. until 5:00 p.m. MDT and again after 9:30 p.m. MDT. Department officials will be available to discuss consent-based siting during the poster sessions.

ADDRESSES: The meeting will be held at Boise Centre, 850 West Front Street, Boise, ID 83702. To register for this meeting and to review the agenda for the meeting, please go to *energy.gov/consentbasedsiting.*

FOR FURTHER INFORMATION CONTACT: Requests for further information should be sent to *consentbasedsiting@hq.doe.gov* or to Michael Reim at 202–586–2981. Updated information on this and other planned public meetings on consent based siting will be posted at *energy.gov/consentbasedsiting.*

If you are unable to attend a public meeting or would like to further discuss ideas for consent-based siting, please request an opportunity for us to speak with you. The Department will do its best to accommodate such requests and help arrange additional opportunities to engage. To learn more about nuclear energy, nuclear waste, and ongoing technical work please go to *energy.gov/consentbasedsiting.*

Privacy Act: Data collected via the mechanisms listed above will not be protected from the public view in any way.

Issued in Washington, DC on March 29, 2016.

Jay Jones,

Acting Associate Deputy Assistant Secretary, Office of Nuclear Energy, Department of Energy.

[FR Doc. 2016–07741 Filed 4–4–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1255–000]

Antelope Big Sky Ranch LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Antelope Big Sky Ranch LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 19, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 30, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07725 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–280]

Public Utility District No. 2 of Grant County; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Resources Management Plan Amendment.

b. *Project No:* 2114–280.

c. *Date Filed:* March 8, 2016.

d. *Applicant:* Public Utility District No. 2 of Grant County (Grant PUD).

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* The project is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Shannon Lowry, Lands and Recreation Manager Grant PUD, P.O. Box 878, Ephrata, WA 98823 (509) 754–5088 ext. 2191, *slowry@gcpud.org.*

i. *FERC Contact:* Mary Karwoski, (202) 502–6543, *Mary.Karwoski@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 29, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2114–280.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Grant PUD has proposed to amend the recreation resources management plan as it relates to improvements at the Crescent Bar Recreation Area. Proposed improvements include: Relocation of existing overnight camping facility (55 campsites) from off-island to on-island location and constructing a new off-island day use area in its place; providing one additional mile (3 miles total) of non-motorized multipurpose trail, including a low impact trail with interpretive signage at south end of Crescent Bar Island; renovating an existing 2-lane boat launch on Crescent Bar Island; adding a new marina with 61 total slips for day-use and overnight moorage along the northern edge of Crescent Bar Island; enhancing the existing day-use area on Crescent Bar Island; and including the existing 9-hole golf course on Crescent Bar Island.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 30, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07726 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–12–000]

Midcontinent Independent System Operator, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On March 29, 2016, the Commission issued an order in Docket No. EL16–12–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Midcontinent Independent System Operator, Inc.'s Open Access Transmission, Energy and Operating Reserve Markets Tariff. *Midcontinent Independent System Operator, Inc.*, 154 FERC ¶ 61,248 (2016).

The refund effective date in Docket No. EL16–12–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: March 30, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07727 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–492–000]

Dominion Transmission, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Leidy South Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) for the Leidy South Project proposed by Dominion Transmission, Inc. (DTI) in the above-referenced docket. DTI requests authorization to construct, install, own, operate, and maintain certain facilities located in Clinton, Franklin, and Centre Counties, Pennsylvania; Frederick County, Maryland; and Loudoun and Fauquier Counties, Virginia, to provide 0.155 billion cubic feet per day of natural gas and firm transportation services in the Mid-Atlantic region.

The EA assesses the potential environmental effects of the construction and operation of this project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

DTI's Leidy South Project involves modifications to six existing DTI compressor stations in Pennsylvania, Maryland, Virginia, and construction of a new metering and regulating station in Virginia. Modifications would occur almost entirely on previously disturbed areas.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before April 29, 2016.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP15–492–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP15–492). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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[1] See the previous discussion on the methods for filing comments.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 30, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07722 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–745–000.
Applicants: Vector Pipeline L. P.
Description: Annual Fuel Use Report for 2015 of Vector Pipeline L. P.
Filed Date: 3/28/16.
Accession Number: 20160328–5067.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–746–000.
Applicants: Bear Creek Storage Company, L.L.C.
Description: Operational Transactions Report of Bear Creek Storage Company, L.L.C.
Filed Date: 3/28/16.
Accession Number: 20160328–5070.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–747–000.
Applicants: Elba Express Company, L.L.C.
Description: 2016 Annual Interruptible Revenue Crediting Report of Elba Express Company, L.L.C.
Filed Date: 3/28/16.
Accession Number: 20160328–5071.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–748–000.
Applicants: Gulf Shore Energy Partners, LP.
Description: Compliance filing Gulf Shore Energy Partners—Compliance Filing to be effective 3/28/2016.
Filed Date: 3/28/16.
Accession Number: 20160328–5085.
Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–749–000.
Applicants: MoGas Pipeline LLC.
Description: § 4(d) Rate Filing: MoGas Negotiated Rate Agreement—Cuba to be effective 4/1/2016.

Filed Date: 3/28/16.

Accession Number: 20160328–5097.

Comments Due: 5 p.m. ET 4/11/16.

Docket Numbers: RP16–750–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (APS April 2016) to be effective 4/1/2016.

Filed Date: 3/28/16.

Accession Number: 20160328–5186.

Comments Due: 5 p.m. ET 4/11/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2107–002.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Compliance filing Revenue Sharing Mechanism Update to be effective 5/1/2016.

Filed Date: 3/24/16.

Accession Number: 20160324–5143.

Comments Due: 5 p.m. ET 4/5/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07721 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Planning Committee

April 7, 2016, 9:30 a.m.–12:00 p.m. (EST)

PJM Transmission Expansion Advisory Committee

April 7, 2016, 11:00 a.m.–3:00 p.m. (EST)

The above-referenced meetings will be held at: PJM Conference and Training Center, PJM Interconnection, 2750 Monroe Boulevard, Audubon, PA 19403.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER16–453, *Northeast Transmission Development, LLC*
Docket No. ER16–736, *PJM Interconnection, L.L.C.*
Docket No. ER14–972, *PJM Interconnection, L.L.C.*
Docket No. ER14–1485, *PJM Interconnection, L.L.C.*
Docket Nos. ER13–1944, *et al., PJM Interconnection, L.L.C., et al.*
Docket No. ER15–1344, *PJM Interconnection, L.L.C.*
Docket No. ER15–1387, *PJM Interconnection, L.L.C. and Potomac Electric Power Company*
Docket No. ER15–2562, *PJM Interconnection, L.L.C.*
Docket No. ER15–2563, *PJM Interconnection, L.L.C.*
Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–41, *Essential Power Rock Springs, LLC, et. al.* v. *PJM Interconnection, L.L.C.*
Docket Nos. ER13–1927, *et al., PJM Interconnection, L.L.C., et al.*
Docket No. ER15–2114, *PJM Interconnection, L.L.C. and Transource West Virginia, LLC*
Docket No. EL15–79, *TransSource, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–95, *Delaware Public Service Commission, et. al.,* v. *PJM Interconnection, L.L.C., et. al.*

Docket No. EL15–67, *Linden VFT, LLC v. PJM Interconnection, L.L.C.*
Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. ER13–198, *PJM Interconnection, L.L.C.*

For more information, contact the following:

Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6604, *Jonathan.Fernandez@ferc.gov.*
Alina Halay, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6474, *Alina.Halay@ferc.gov.*

Dated: March 30, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–07728 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

FTS Project Owner 1, LLC.	EG16–26–000
FTS Master Tenant 1, LLC.	EG16–27–000
Javelina Interconnection, LLC.	EG16–28–000
Avalon Solar Partners II LLC.	EG16–29–000
Goal Line L.P	EG16–30–000
Voyager Wind I, LLC ...	EG16–31–000
Pasadena Cogen, LLC ...	EG16–32–000
Wind Service Sp. z.o.o.	FC16–1–000

Take notice that during the month of February 2016, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: March 30, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–07723 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–50–000]

Percheron Power, LLC; Notice of Petition for Declaratory Order

Take notice that on March 25, 2016, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2015), Percheron Power, LLC (Percheron), filed a petition for a declaratory order requesting that the Commission find that it has jurisdiction to authorize small conduit hydroelectric projects of five megawatts or less within the Columbia Basin Project (CBP), and specifically at five incidental features within CBP for which preliminary permits previously had been granted for the PEC 1973 Drop Hydroelectric Project (expired Permit No. 14316); the Scooteney Inlet Drop Project (expired Permit No. 14318); Scooteney Outlet Hydroelectric Project (surrendered Permit No. 14317); 16.4 Wasteway Hydroelectric Project (expired Permit No. 14349); and 46A Wasteway Hydroelectric Project (expired Permit No. 14351), all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on April 25, 2016.

Dated: March 30, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–07724 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–95–000.
Applicants: Calhoun Power Company, LLC.
Description: Application of Calhoun Power Company, LLC for Authorization Under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities and Requests for Waivers, Expedited Action, and Confidential Treatment.
Filed Date: 3/29/16.
Accession Number: 20160329–5212.
Comments Due: 5 p.m. ET 4/19/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1585–008; ER12–60–010; ER10–1632–010; ER10–1628–008; ER10–1623–004; ER10–1617–008; ER10–1616–004; ER10–1594–008.
Applicants: Alabama Electric Marketing, LLC, California Electric Marketing, LLC, New Covert Generating Company, LLC, New Mexico Electric Marketing, LLC, Tenaska Frontier Partners, Ltd., Tenaska Power Management, LLC, Tenaska Power Services Co., Texas Electric Marketing, LLC.
Description: Supplement to June 30, 2015 Triennial Market Power Analysis for the Central Region of the Tenaska MBR Sellers.
Filed Date: 3/30/16.
Accession Number: 20160330–5170.
Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–885–001.
Applicants: Entergy Arkansas, Inc.
Description: Tariff Amendment: Union Power Station Joint Operating Agreement to be effective 3/3/2016.
Filed Date: 3/15/16.
Accession Number: 20160315–5164.
Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–890–001.
Applicants: Summer Solar LLC.
Description: Tariff Amendment: Summer Solar LLC MBR Tariff to be effective 3/4/2016.
Filed Date: 3/29/16.
Accession Number: 20160329–5203.

Comments Due: 5 p.m. ET 4/19/16.

Docket Numbers: ER16–1255–000.

Applicants: Antelope Big Sky Ranch LLC.

Description: Supplement to March 22, 2016 Antelope Big Sky Ranch LLC tariff filing [replacement Transmittal Letter and Appendix B attachments].

Filed Date: 3/30/16.

Accession Number: 20160330–5075.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1284–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 607R27 Westar Energy, Inc. NITSA NOA to be effective 3/1/2016.

Filed Date: 3/30/16.

Accession Number: 20160330–5092.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1285–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1276R10 KCPL NITSA NOA to be effective 3/1/2016.

Filed Date: 3/30/16.

Accession Number: 20160330–5098.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1286–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Tariff Amendments to Clarify Redispatch Provisions to be effective 5/29/2016.

Filed Date: 3/30/16.

Accession Number: 20160330–5137.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1287–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Revised Non-Trasmission Depreciation Rates in SCE's Formula Transmission Rate to be effective 5/30/2016.

Filed Date: 3/30/16.

Accession Number: 20160330–5149.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1288–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3178 South Central MCN and SPS Interconnection Agreement to be effective 12/31/9998.

Filed Date: 3/30/16.

Accession Number: 20160330–5157.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1289–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) Rate Filing: Amendment to Attachment M to be effective 5/30/2016.

Filed Date: 3/30/16.

Accession Number: 20160330–5164.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1290–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1628R9 Western Farmers Electric Cooperative NITSA to be effective 3/1/2016.

Filed Date: 3/30/16.

Accession Number: 20160330–5165.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1291–000.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing in Docket No. EL14–94–001 re: Market Seller Offer Caps to be effective 3/1/2016.

Filed Date: 3/30/16.

Accession Number: 20160330–5220.

Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: ER16–1292–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Filing to Modify Formula Transmission Rate Schedule 33 Retail Rate Design to be effective 5/30/2016.

Filed Date: 3/30/16.

Accession Number: 20160330–5226.

Comments Due: 5 p.m. ET 4/20/16.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–601–000.

Applicants: Trenton Biogas LLC.

Description: Form 556 of Trenton Biogas LLC.

Filed Date: 3/29/16.

Accession Number: 20160329–5279.

Comments Due: None Applicable.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR13–12–004; EL13–52–003.

Applicants: Western Electricity Coordinating Council, Peak Reliability.

Description: Joint Motion of Western Electricity Coordinating Council and Peak Reliability to Terminate Sub-Delegation.

Filed Date: 3/30/16.

Accession Number: 20160330–5178.

Comments Due: 5 p.m. ET 4/20/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 30, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07720 Filed 4–4–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2016–0190; FRL–9944–57–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), notice is hereby given of a proposed consent decree to address a lawsuit filed by Donald van der Vaart, in his official capacity as Secretary of the North Carolina Department of Environmental Quality, and the North Carolina Department of Environmental Quality in the United States District Court for the Eastern District of North Carolina: *Donald van der Vaart, et al.* v. *EPA,* Civil Action No. 5:15–cv–593–FL (E.D. NC) (filed Nov. 13, 2015). Plaintiffs filed a lawsuit alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), failed to perform a duty mandated by the CAA to take final action to approve, disapprove, or conditionally approve, in whole or in part, North Carolina's September 5, 2013 state implementation plan ("SIP") revisions addressing the prevention of significant deterioration ("PSD") regulations regarding the increments for particulate matter less than 2.5 micrometers ("$PM_{2.5}$") and implementing regulations. The proposed consent decree would establish a deadline for EPA to take certain specified actions.

DATES: Written comments on the proposed consent decree must be received by May 5, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–

HQ–OGC–2016–0190, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3244; fax number: (202) 564–5603; email address: *hogan.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Donald van der Vaart, in his official capacity as Secretary of the North Carolina Department of Environmental Quality, and the North Carolina Department of Environmental Quality seeking to compel the Administrator to take an action under CAA sections 110(k)(2)–(4) to approve, disapprove, or conditionally approve, in whole or in part, the portion of North Carolina's September 5, 2013, SIP revision addressing the $PM_{2.5}$ PSD increments and implementing regulations. Under the terms of the proposed consent decree, EPA would take certain specified action with respect to this claim no later than September 23, 2016. See the proposed consent decree for specific details.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this proposed consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by EPA–HQ–OGC–2016–0190) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: March 29, 2016.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2016–07810 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9944–63–OA]

Notification of a Cancellation of a Public Teleconference of the Science Advisory Board's Economy-Wide Modeling Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation.

SUMMARY: The Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office is cancelling the May 19, 2016, teleconference of the Economy-Wide Modeling Panel announced earlier (80 FR 77625–77626).

DATES: The May 19, 2016, teleconference of the SAB Economy-Wide Modeling Panel has been cancelled. The July 19–20, 2016, face-to-face meeting of the Economy-Wide Modeling Panel previously announced (80 FR 77625–77626, December 15, 2015) will be held as scheduled.

Dated: March 29, 2016.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2016–07807 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–9943–80]

Environmental Modeling Public Meeting; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Environmental Modeling Public Meeting (EMPM) will be held on Monday, May 9, 2016. This Notice announces the location and time for the meeting and provides a tentative list of topics to be covered in the meeting. The EMPM provides a public forum for EPA and its stakeholders to discuss current issues related to modeling pesticide fate, transport, and exposure for pesticide risk assessments in a regulatory context.

DATES: The meeting will be held on Monday, May 9, 2016 from 9:00 a.m. to 4:00 p.m. Requests to participate in the meeting must be received on or before April 15, 2016.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (South Building), First Floor Conference Center (S–1204/6), 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Bill Eckel or James Hook, Environmental Fate and Effects Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone numbers: (703) 305–6451 and (703) 347–0307; fax number: (703) 347–8011; email address: *eckel.william@epa.gov* and *hook.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agriculture, Forestry, Fishing and Hunting NAICS code 11
- Utilities NAICS code 22
- Professional, Scientific and Technical NAICS code 54

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0879 is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

On a biannual interval, an Environmental Modeling Public Meeting (EMPM) is held for presentation and discussion of current issues related to modeling pesticide fate, transport, and exposure for risk assessment in a regulatory context. Meeting dates and abstract requests are announced through the "empmlist" forum on the Lyris list server at: *https://lists.epa.gov/read/all_forums/.*

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2009–0879 must be received on or before April 15, 2016. Participants can also join the meeting by going to*: https://epa.connectsolutions.com/oct2015empm/* and enter as a guest. Participants will then need to call in to the meeting by using the call in number 1–866–299–3188, followed by the conference code (703) 555–6627.

IV. Tentative Topics for the Meeting

- TED tool for Endangered Species Act (ESA) terrestrial risk assessment.
- ESA weight-of-evidence tool.
- TIM-McNest.
- Population model of a threatened plant species.
- Impact of variability in non-target terrestrial plant studies on endpoint selection.
- Overlap tool for May affect determinations.
- Aquatic exposure modeling for ESA pilot chemicals.
- Development and evaluation of a screening-level flowing water exposure modeling approach for endangered species assessments.
- Watershed-scale refined flowing water exposure modeling approach for endangered species assessments.
- Pesticide residue and degradation formulations in vegetative filter strips for environmental exposure assessments.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 23, 2016.

Donald J. Brady,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 2016–07794 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9944–59–OEI]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget

(OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Courtney Kerwin (202) 566–1669, or email at *kerwin.courtney@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2470.01; Technical Assistance Needs Assessments (TANAs) at Superfund Remedial or Removals Sites (New); was approved with change on 11/02/2015; OMB Number 2050–0211; expires on 11/30/2018.

EPA ICR Number 0186.13; NESHAP for Vinyl Chloride (Renewal); 40 CFR part 61, subparts A and F; was approved without change on 11/02/2015; OMB Number 2060–0071; expires on 11/30/2018.

EPA ICR Number 0155.12; Certification of Pesticide Applicators (Renewal); 40 CFR parts 171, 171.7, 171.11, and 152; was approved with change on 11/02/2015; OMB Number 2070–0029; expires on 11/30/2018.

EPA ICR Number 2449.02; Water Quality Standards Regulatory Clarifications (Final Rule); 40 CFR part 131; was preapproved on 11/2/2015; OMB Number 2040–0286; expires on 11/30/2018.

EPA ICR Number 0574.16; Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances (Final Rule); 40 CFR parts 700, 720, 721, 723, 725, 725 subpart F, 720.38, 723.50, 725.250, 725.424, 725.428, 720.25, 725.15, 723.250, 723.175, 720.36, and 725.190; was approved with change on 11/03/2015; OMB Number 2070–0012; expires on 11/30/2018.

EPA ICR Number 0246.12; Contractor Cumulative Claim and Reconciliation (Renewal); was approved without change on 11/4/2015; OMB Number 2030–0016; expires on 11/30/2018.

EPA ICR Number 1445.12; Continuous Release Reporting Regulations (CRRR) under CERCLA 1980 (Renewal); 40 CFR part 302; was approved without change on 11/4/2015; OMB Number 2050–0086; expires on 11/30/2018.

EPA ICR Number 1775.07; Hazardous Remediation Waste Management Requirements (HWIR-Media) (Renewal); 40 CFR part 264, 270, and 271; was approved without change on 11/5/2015; OMB Number 2050–0161; expires on 11/30/2018.

EPA ICR Number 1189.26; Identification, Listing and Rulemaking Petitions (Renewal); 40 CFR parts 260, 261, and 257, subpart D; was approved with change on 11/5/2015; OMB Number 2050–0053; expires on 11/30/2018.

EPA ICR Number 1633.16; Acid Rain Program under Title IV of the Clean Air Act Amendments (Renewal); 40 CFR part parts 72–78; was approved without change on 11/6/2015; OMB Number 2060–0258; expires on 11/30/2018.

EPA ICR Number 2028.08; NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (Renewal); 40 CFR part 63, subparts A and DDDDD; was approved without change on 11/06/2015; OMB Number 2060–0551; expires on 11/30/2018.

EPA ICR Number 2164.05; Emission Guidelines for Existing Other Solid Waste Incineration (OSWI) Units (Renewal); 40 CFR part 60, subparts A and FFFF; was approved without change on 11/9/2015; OMB Number 2060–0562; expires on 11/30/2018.

EPA ICR Number 1686.10; NESHAP for the Secondary Lead Smelter Industry (Renewal); 40 CFR part 63, subparts A and X; was approved without change on 11/10/2015; OMB Number 2060–0296; expires on 11/30/2018.

EPA ICR Number 1957.07; NESHAP for Metal Coil Surface Coating Plants (Renewal); 40 CFR part 63, subparts A and SSSS; was approved without change on 11/10/2015; OMB Number 2060–0487; expires on 11/30/2018.

EPA ICR Number 0575.15; Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies (Renewal); 40 CFR part 716; was approved without change on 11/10/2015; OMB Number 2070–0004; expires on 11/30/2018.

EPA ICR Number 2066.06; NESHAP for Engine Test Cells/Stands (Renewal); 40 CFR part 63, subparts A and PPPPP; was approved without change on 11/10/2015; OMB Number 2060–0483; expires on 11/30/2018.

EPA ICR Number 1745.08; Criteria for Classification of Solid Waste Disposal Facilities and Practices (Renewal); 40 CFR part 257, subpart B; was approved with change on 11/10/2015; OMB Number 2050–0154; expires on 11/30/2018.

EPA ICR Number 1363.24; Toxic Chemical Release Reporting (Change); 40 CFR part 372; was approved without change on 11/12/2015; OMB Number 2025–0009; expires on 11/30/2017.

EPA ICR Number 2267.04; NESHAP for Iron and Steel Foundries (Renewal); 40 CFR part 63, subparts ZZZZZ and A; was approved with change on 11/16/2015; OMB Number 2060–0605; expires on 11/30/2018.

EPA ICR Number 1127.11; NSPS for Hot Mix Asphalt Facilities (Renewal); 40 CFR part 60, subpart I; was approved without change on 11/18/2015; OMB Number 2060–0083; expires on 11/30/2018.

EPA ICR Number 1054.12; NSPS for Petroleum Refineries (Renewal); 40 CFR part 60, subparts A and J; was approved without change on 11/18/2015; OMB Number 2060–0022; expires on 11/30/2018.

EPA ICR Number 1557.09; NSPS for Municipal Solid Waste Landfills (Renewal); 40 CFR part 60, subparts WWW and A; was approved without change on 11/18/2015; OMB Number 2060–0220; expires on 11/30/2018.

EPA ICR Number 0660.12; NSPS for Metal Coil Surface Coating (Renewal); 40 CFR part 60, subparts A and TT; was approved without change on 11/18/2015; OMB Number 2060–0107; expires on 11/30/2018.

Courtney Kerwin,

Acting Director, Collections Strategies Division.

[FR Doc. 2016–07697 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[9944–65–Region 6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement concerning the Rab Valley Wood Preserving Superfund Site, located in Panama, LeFlore County, Oklahoma.

The settlement requires Joslyn Manufacturing Company, settling party, to pay a total of $280,000 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Sections 106 and 107(a) of CERCLA, 42, U.S.C. 9606 and 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before May 5, 2016.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kenneth Talton, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–7475. Comments should reference the Rab Valley Wood Preserving Superfund Site, Panama, LeFlore County, Oklahoma, and EPA Docket Number 6–02–16, and should be addressed to Kenneth Talton at the address listed above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Pletan, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–8525.

Dated: March 28, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–07802 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0119; FRL 9944–64–OAR]

Proposed Information Collection Request; Comment Request; Motor Vehicle and Engine Compliance Program Fees (Renewal), EPA ICR 2080.06, OMB Control No. 2060–0545

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "Motor Vehicle and Engine Compliance Program Fees (Renewal)", EPA ICR 2080.06, OMB Control No. 2060–0545 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collections as described below. This is a proposed extensions of the ICRs, which is currently approved through September 30, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 6, 2016.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OAR–2013–0119, online using *www.regulations.gov* (our preferred method), by email to Lynn Sohacki at *sohacki.lynn@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number 734–214–4869; email address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: As required by the Clean Air Act, EPA has regulations establishing emission standards and other requirements for various classes of vehicles, engines, and evaporative emissions. These regulations require that compliance be demonstrated prior to EPA granting a "Certificate of Conformity". EPA charges fees for administering this certification program. In 2004 the fees program was expanded to include non-road categories of vehicles and engines, such as several categories of marine engines, locomotives, non-road recreational vehicles, and many non-road compression-ignition and spark-ignition engines. Manufacturers and importers of covered vehicles, engines and components are required to pay the applicable certification fees prior to their certification applications being reviewed. Under section 208 of the Clean Air Act (42 U.S.C. 7542(c)) all information, other than trade secret processes or methods, must be publicly available. Information about fee payments is treated as confidential information prior to certification.

Form Numbers: EPA Forms 3520–29.

Respondents/affected entities: Manufacturers or importers of passenger cars, motorcycles, light trucks, heavy duty truck engines, non-road vehicles or engines, and evaporative emissions components required to receive a certificate of conformity from EPA prior to selling or introducing these products into commerce in the U.S.

Respondent's obligation to respond: Required to obtain or retain a benefit (40 CFR part 1027). Estimated number of respondents: 597.

Frequency of response: Yearly and occasionally.

Total estimated burden: 927 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $59,683 (per year), which includes $9,965 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 586 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is an adjustment of the estimate due to the decrease in the number of fee forms received from manufacturers and, more significantly, the decrease in labor due to the institution of an all-electric payment system which eliminates the need to print and fill forms by hand, resulting in a significant decrease in labor hours.

Dated: March 29, 2016.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–07804 Filed 4–4–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 2, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *United Bankers' Bancorporation, Inc.*, Bloomington, Minnesota; to merge with Bankers Bancshares, Inc., Worthington, Ohio, and thereby indirectly acquire, Great Lakes Bankers Bank, Worthington, Ohio.

In connection with this application, Applicant has applied to acquire Great Lakes Banc Consulting Inc., Worthington, Ohio and thereby engage in management consulting activities pursuant to section 225.28 (b)(9)(i) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *F & M State Bancshares, Inc.;* Cawker City, Kansas, to acquire 100 percent of the voting shares of F M Co., Kearney, Nebraska, and thereby indirectly acquire Farmers and Merchants Bank, Milligan, Nebraska.

Board of Governors of the Federal Reserve System, March 31, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–07825 Filed 4–4–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 20, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Notification submitted by Eric W. Milton, Milligan, Nebraska; Gary Carl Tuttle, Friend, Nebraska; Galen Dean Tuttle, Friend, Nebraska; Kent C. Manning, Fairmont, Nebraska; Ann R. Jansky, Friend, Nebraska; Tracy K. Kresak, Milligan, Nebraska; Gary D. Dick, Tobias, Nebraska; Charles W. Remus, Cawker City, Kansas; Debra K. Filipi, Milligan, Nebraska; Deanna L. Clausen, Downs, Kansas; Stanton J. Schoen, Cawker City, Kansas; Jamie L. Schafer, Tobais, Nebraska; Kendra J. Jansky, Milligan, Nebraska; Ross M. Weber, Cawker City, Kansas; and Reginald Roth, Wolbach, Nebraska, as a group acting in concert;* to acquire voting shares of F & M State Bancshares, Inc., parent of The Farmers & Merchants State Bank of Cawker City, both of Cawker City, Kansas.

Board of Governors of the Federal Reserve System, March 31, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–07824 Filed 4–4–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132; Docket 2016–0053; Sequence 1]

Submission for OMB Review; Contractors' Purchasing Systems Reviews

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning contractors' purchasing systems reviews. A notice was published in the **Federal Register** at 81 FR 3135 on January 20, 2016. No comments were received.

DATES: Submit comments on or before May 5, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0132, Contractors' Purchasing Systems Reviews". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0132, Contractors' Purchasing Systems Reviews" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0132, Contractors' Purchasing Systems Reviews.

Instructions: Please submit comments only and cite Information Collection 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 703–605–2868 or email at *mahruba.uddowla@gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.

Responses per Respondent: 1.

Total Responses: 1,580.

Average Burden per Response: 25.

Total Burden Hours: 39,500.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: March 30, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–07743 Filed 4–4–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0114; Docket 2016–0053; Sequence 23]

Information Collection; Right of First Refusal of Employment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection.

DATES: Submit comments on or before June 6, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0114, Right of First Refusal of Employment, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0114, Right of First Refusal of Employment". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0114, Right of First Refusal of Employment" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Divison (MVCB), 1800 F Street NW., Washington, DC, 20405. ATTN: Ms. Flowers/IC 9000–0114, Right of First Refusal of Employment.

Instructions: Please submit comments only and cite Information Collection 9000–0114, Right of First Refusal of Employment, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, at 202–208–4949 or via email at *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

As prescribed in FAR 7.305(c), the clause at FAR 52.207–3, Right of First Refusal of Employment, deals with adversely affected or separated Government employees resulting from the conversion of work from in-house performance to performance by contract. The clause requires the contractor to give these employees an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

B. Annual Reporting Burden

Number of Respondents: 10.
Responses per Respondent: 1.
Total Responses: 10.
Hours per Response: 3.
Total Burden Hours: 30.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0114, Right of First Refusal of Employment, in all correspondence.

Dated: March 30, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–07742 Filed 4–4–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0255; Docket No. CDC–2016–0035]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the information collection project entitled "Resources and Services Database of the CDC National Prevention Information Network (NPIN, formerly known as the National AIDS Clearinghouse, OMB Control Number 0920–0255 exp. 12/31/2016). CDC seeks an extension of this information collection.

DATES: Written comments must be received on or before June 6, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0035 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Resources and Services Database of the CDC National Prevention Information Network (OMB Control No. 0920–0255, exp. 12/31/2016)—Extension—National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NCHHSTP has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, viral hepatitis, sexually transmitted diseases (STDs), and tuberculosis (TB), as well as for community-based HIV prevention activities, syphilis, and TB elimination programs. NPIN serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, viral hepatitis, STDs, and TB, supporting NCHHSTP's mission to link Americans to prevention, education, and care services. NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, viral hepatitis, STDs, and TB, and provides services for persons infected with human immunodeficiency virus (HIV). NPIN services are designed to facilitate program collaboration in sharing information, resources, published materials, research, and trends among the four diseases.

The NPIN Resources and Services Database contains entries on approximately 9,000 organizations and is the most comprehensive listing of HIV/AIDS, viral hepatitis, STD, and TB resources and services available throughout the country. The American public can also access the NPIN Resources and Services database through the NPIN Web site. More than 1,000,000 unique visitors and more than 3,000,000 page views are recorded annually.

To accomplish CDC's goal of continuing efforts to maintain an up-to-date, comprehensive database, NPIN plans each year to add up to 400 newly identified organizations and to verify those organizations currently described in the NPIN Resources and Services Database each year. Organizations with access to the Internet will be given the option to complete and submit an electronic version of the questionnaire by visiting the NPIN Web site. Methods to be used to collect the information include online, telephone and email survey questionnaires to collect information from representatives of the organizations that provide covered services.

The respondent population includes Registered Nurses, Social and Community Service Managers, Health Educators, Social and Human Service Assistants working within NPIN member organizations that provide HIV/AIDS, viral hepatitis, STD, and TB prevention, education, testing, and healthcare services.

This data collection uses no inferential statistical methods. The data collected is in textual or anecdotal format and will be used for information purposes.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Initial Questionnaire Telephone Script.	Registered nurses, Social and community service managers, and Health educators.	400	1	15/60	100
Telephone Verification	Registered nurses, Social and community service managers, and Health educators Social and human service assistants.	6,100	1	10/60	1,017
Email Verification	Registered nurses, Health educators, and Social and human service assistants, social and community service managers.	3,000	1	12/60	600
Total					1,700

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–07707 Filed 4–4–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–15BFV]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

A Study of Viral Persistence in Ebola Virus Disease
(EVD) Survivors—Existing Information Collection Without an OMB Control Number—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Much progress has been made in the year since the CDC first responded to the Ebola outbreak in West Africa, but the agency's efforts must continue until there are zero new cases of Ebola virus disease (EVD). As the CDC's 2014 Ebola virus response maintains the international goal of zero new EVD cases in 2015, the agency must intensify its efforts to identify and prevent every potential route of human disease transmission and to understand the most current community barriers to reaching that final goal.

Persistence of Ebola Virus (EBOV) in Body Fluids of EVD Survivors in Sierra Leone is the first systematic examination of the post-recovery persistence of EBOV and the risks of transmission from a cohort of convalescent Ebola survivors during close or intimate contact. It is important to fully understand how long the virus stays active in body fluids other than blood in order to target and refine public health interventions to arrest the ongoing spread of disease.

The research study is comprised of three modules based on the body fluids to be studied: A pilot module of adult males (semen) and two full modules: Module A of adult men and women repeating collections and questionnaires every two weeks (semen, vaginal secretions, and saliva, tears, sweat, urine, rectal swab), and Module B of lactating adult women repeating collections and questionnaires every three days (sweat and breast milk).

Participants for each module will be recruited by trained study staff from Ebola treatment units (ETUs) and survivor registries. Participants will be followed up at study sites in government hospitals.

Specimens will be tested for EBOV ribonucleic acid (RNA) by reverse transcription polymerase chain reaction test (RT–PCR) in Sierra Leone at the CDC laboratory facility in Bo. All positive RT–PCR samples will be sent to CDC Atlanta for virus isolation. Each body fluid will be collected until two negative RT–PCR results are obtained. Participants will be followed until all their studied body fluids are negative. They will receive tokens of appreciation for their participation at the initial visit and again at every subsequent follow-up visit [*e.g.,* 120,000 Leones (approximately $28 US dollars) and a supply of condoms]. For Module A, men and women will be recruited in equal numbers for this study until more information on gender effects of viral persistence is available. A trained study data manager will collect test results for all participants in a laboratory results form.

Results and analyses are needed to update relevant counseling messages and recommendations from the Sierra Leone Ministry of Health, World Health Organization, and CDC. The study will provide the most current information that is critical to the development of public health measures, such as recommendations about sexual activity, breastfeeding, and other routine activities and approaches to evaluation of survivors to determine whether they can safely resume sexual activity. These approaches in turn are expected to reduce the risk of Ebola resurgence and mitigate stigma for thousands of survivors. The information is likewise critical to reducing the risk that Ebola would be introduced in a location that has not previously been affected.

The total burden hours requested for the research study in Sierra Leone is 1,836 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	No. of respondents	No. of responses per respondent	Average burden per response (hours)
Data manager	Intake Form	1	550	20/60
Pilot participants	Survivor Questionnaire	100	1	30/60
Pilot participants	Survivor Follow-up Questionnaire	100	5	15/60
Pilot participants	3 & 6 Month Follow up Questionnaire	100	2	15/60
Main study male participants	Survivor Questionnaire	120	1	30/60
Main study male participants	Survivor Follow-up Questionnaire	120	12	15/60
Main study male participants	3 & 6 Month Follow Questionnaire	120	2	15/60
Main study female participants	Survivor Questionnaire	120	1	30/60
Main study female participants	Survivor Follow-up Questionnaire	120	4	15/60
Main study female participants	3 & 6 Month Follow up Questionnaire	120	2	15/60
Data manager	Laboratory Results Form	1	4,250	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–07803 Filed 4–4–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, R13 Conference Grant Application Review.

Date: April 28, 2016.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 30, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07677 Filed 4–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute

Request for Nominations for Members to serve on the National Institutes of Health (NIH), National, Heart, Lung, and Blood Institute's (NHLBI) National Asthma Education and Prevention Program (NAEPP) Coordinating Committee.

SUMMARY: The National Heart, Lung, and Blood Institute of the National Institutes of Health is requesting nominations for members to serve on the newly constituted National Asthma Education and Prevention Program Coordinating Committee (herein referred to as the "Committee"), a Federal advisory committee established in accordance with the Federal Advisory Committee Act. The Committee's primary mission is to provide advice to the NHLBI and other Federal agencies on matters concerning asthma and to facilitate efficient and effective exchange of information on asthma activities among the member agencies, and voluntary health organizations in order to enhance coordination of asthma-related programs and activities.

DATES: Nominations for membership received on or before April 29, 2016, will be considered in the pool of submitted nominations and from other sources as needed to meet statutory requirements for membership on the Committee. Nominations received after April 29, 2016, will be considered for future vacancies.

I. Function of the National Asthma Education and Prevention Program Coordinating Committee

The NAEPP was created to address asthma in the United States. The objectives of the Committee are to: (1) Raise awareness of patients, health professionals, and the public that asthma is a serious chronic disease and to ensure the recognition of the symptoms of asthma by patients, families, and the public and the appropriate diagnosis by health professionals, (2) continually identify Federal programs that carry out asthma-related activities, and (3) develop or update, in consultation with appropriate Federal agencies and professional voluntary health organizations, the Federal plan for responding to asthma to aid in effective control of asthma by encouraging a partnership among Federal agencies, patients, physicians, and other health professionals through modern treatment and education programs.

To accomplish these broad program goals, the Committee is made up of members from the National Heart, Lung, and Blood Institute (NHLBI), as well as other Federal agencies, intermediaries including major medical associations, voluntary health organizations, and community programs and strives to educate patients, health professionals, and the public.

II. Criteria for Members

In accordance with the Committee's charter, "The Committee will consist of up to 15 voting members. Members will consist of Federal employees, Special Government Employees (SGEs), and Representatives."

At least three members will represent government agencies, from among the NIH national research institutes and centers involved in research with respect to asthma, the Department of Housing and Urban Development, the Centers for Disease Control and Prevention, or any other Federal departments and agencies whose programs involve health functions or responsibilities relevant to this disease.

At least three non-Federal members will serve as Special Government Employees (SGEs) selected from the health and scientific disciplines with respect to asthma. These members will be invited to serve up to four-year terms.

At least three non-Federal members will serve as Representatives from professional societies, voluntary health organizations, and community programs whose purpose is to enhance the quality of life for patients with asthma and decrease asthma-related morbidity and mortality. These members will be invited to serve up to four-year terms. There may be only one Representative per organization.

Terms of more than two years are contingent upon the renewal of the Committee charter by appropriate action prior to its termination. Members may serve after the expiration of their terms until their successors have taken office. A quorum for the conduct of business by the full Committee will consist of a majority of currently appointed members.

III. Subcommittees and Working Groups

As necessary, subcommittees and ad hoc working groups may be established by the Designated Federal Officer within the Committee's jurisdiction. The advice/recommendations of a subcommittee/working group must be deliberated by the parent advisory committee.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the National Asthma Education and Prevention Program Coordinating Committee. Self-nominations are also accepted. The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of diverse ethnic and racial groups and people with disabilities are represented on HHS Federal advisory committees, and the Department therefore, encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. Nominations must include a current resume or curriculum vitae of each nominee, including current business address, telephone number, and email address, a brief explanation of the nominee's qualifications for the committee, experience and activity on boards, committees, and/or membership in advocacy groups dealing with asthma. Nominations must also acknowledge that the nominee is aware of the nomination and is willing to serve as a member.

All nominations for membership should be submitted through the "Nomination Form for Members" Form located at this link *http://www.nhlbi.nih.gov/about/org/naepp/*. In addition to submission of a completed nomination form, the candidate's current resume or curriculum vitae will be required.

FOR FURTHER INFORMATION CONTACT: Rachael Tracy, Center for Translation Research and Implementation Science (CTRIS), National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, 6th Floor, Suite 6070, Bethesda, MD 20892, Phone: 301–496–1051, FAX: 301–402–1051, Email: *tracyr@mail.nih.gov*.

Dated: *March 30, 2016.*

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07678 Filed 4–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172)—Extension

These regulations meet the directive under 42 U.S.C. 10826 (b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements. The Act authorizes funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or significant (severe) emotional impairment (children/youth) as defined by 42 U.S.C. 10802 (4) and 10804 (d). Only entities designated by the governor of each State, including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Mayor of the District of Columbia, and the tribal councils for the American Indian Consortium (the Hopi and Navajo Nations in the Four Corners region of the Southwest), to protect and advocate the rights of persons with developmental disabilities are eligible to receive PAIMI Program grants [the Act at 42 U.S.C. at 10802 (2)]. These grants are based on a formula prescribed by the Secretary [42 U.S.C. at 10822(a)(1)(A)].

On January 1, each eligible state protection and advocacy (P&A) system is required to prepare a report that describes its activities, accomplishments, and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI Program allotments during the most recently completed fiscal year. The PAIMI Act at 42 U.S.C. 10824 (a) requires that each P&A system transmit a copy of its annual report to the Secretary (via SAMHSA/CMHS) and to the State Mental Health Agency where the system is located. These annual PAIMI Program Performance Reports (PPR) to the Secretary must include the following information:

- The number of (PAIMI-eligible) individuals with mental illness served;
- A description of the types of activities undertaken;
- A description of the types of facilities providing care or treatment to which such activities are undertaken;
- A description of the manner in which the activities are initiated;
- A description of the accomplishments resulting from such activities;
- A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI Program allotments;
- A description of activities conducted by States to protect and advocate such rights;
- A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights; and,
- A description of the coordination among such systems, activities and mechanisms;
- Specification of the number of public and nonprofit P&A systems established with PAIMI Program allotments;
- Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the need for such activities and services that were not met by the State P&A systems established under the PAIMI Act due to resource or annual program priority limitations.

The PAIMI Rules [42 CFR part 51] mandate that each State P&A system may place restrictions on either its case or client acceptance criteria developed as part of its annual PAIMI priorities. Each P&A system is required to inform prospective clients of any such restrictions when they request a service [42 CFR 51.32 (b)].

The PAIMI PPR summary must include a separate section, prepared by the PAIMI Advisory Council (PAC), that describes the council's activities and its assessment of the State P&A system's operations [PAIMI Act at 42 U.S.C. 10805 (7)].

The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows.

42 CFR Citation	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total annual burden
51.8 (a) (2) Program Performance Report	57	1	26.0	[1]1,482
51.8 (a) (8) Advisory Council Report	57	1	10.0	[1]570
51.10 Remedial Actions:				
Corrective Action Plans	7	1	8.0	56
Implementation Status Report	7	3	2.0	42
51.23 (c) Reports, materials and fiscal data provided to the PAC	57	1	1.0	57
51.25 (b) (2) Grievance Procedures	57	1	.5	29
Total	126	8	47.5	184

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 15E57–B, 5600 Fishers Lane, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received by June 6, 2016.

Summer King,

Statistician.

[FR Doc. 2016–07779 Filed 4–4–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4258–DR; Docket ID FEMA–2016–0001]

Oregon; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–4258–DR), dated February 17, 2016, and related determinations.

DATES: *Effective Date:* March 21, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 17, 2016.

Clackamas County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07789 Filed 4–4–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4263–DR; Docket ID FEMA–2016–0001]

Louisiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4263–DR), dated March 13, 2016, and related determinations.

DATES: *Effective Date:* March 25, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 13, 2016.

Jackson, Rapides, Red River, and Sabine Parishes for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07790 Filed 4–4–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1607]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 4, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Colorado:						
Arapahoe	Unincorporated areas of Arapahoe County (15–08–1087P).	The Honorable Nancy N. Sharpe, Chair, Arapahoe County Board of Commissioners 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works Department, 6924 South Lima Street, Littleton, CO 80122.	*http://www.msc.fema.gov/lomc.*	May 26, 2016	080011
Archuleta	Unincorporated areas of Archuleta County, (14–08–0969P).	The Honorable Michael Whiting, Chairman, Archuleta County Board of Commissioners, P.O. Box 1507, Pagosa Springs, CO 81147.	Archuleta County Development Services Department, P.O. Box 1507, Pagosa Springs, CO 81147.	*http://www.msc.fema.gov/lomc.*	May 20, 2016	080273
Denver	City and County of Denver, (15–08–1275P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	*http://www.msc.fema.gov/lomc.*	May 19, 2016	080046
Routt	City of Steamboat Springs, (15–08–0994P).	The Honorable Walter Magill, President, City of Steamboat Springs Council, 1769 Brome Drive, Steamboat Springs, CO 80487.	City Hall, 124 10th Street, Steamboat Springs, CO 80477.	*http://www.msc.fema.gov/lomc.*	May 31, 2016	080159
Florida:						
Broward	City of Pompano Beach, (15–04–6416P).	The Honorable Lamar Fisher, Mayor, City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, FL 33060..	Building Inspections Department, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	*http://www.msc.fema.gov/lomc*	May 27, 2016	120055
Hardee	City of Wauchula, (14–04–9451P).	The Honorable Richard Keith Nadaskay, Jr., Mayor, City of Wauchula, 126 South 7th Avenue, Wauchula, FL 33873.	Administration Building, 126 South 7th Avenue, Wauchula, FL 33873.	*http://www.msc.fema.gov/lomc.*	May 27, 2016	120105

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Hardee	Unincorporated areas of Hardee County, (14–04–9451P).	The Honorable Rick Knight, Chairman, Hardee County Board of Commissioners, 412 West Orange Street, Room 103, Wauchula, FL 33873.	Hardee County, Planning and Development Department, 110 South 9th Avenue, Wauchula, FL 33873.	*http://www.msc.fema.gov/lomc.*	May 27, 2016	120103
Levy	City of Cedar Key, (15–04–4427P).	The Honorable Heath Davis, Mayor, City of Cedar Key, 490 2nd Street, Cedar Key, FL 32625.	Building Department, 490 2nd Street, Cedar Key, FL 32625.	*http://www.msc.fema.gov/lomc.*	May 27, 2016	120373
Miami-Dade	City of Sunny Isles Beach, (15–04–4049P).	The Honorable George "Bud" Scholl, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	Building Department, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	*http://www.msc.fema.gov/lomc.*	Jun. 2, 2016	120688
Orange	City of Orlando, (16–04–0720P).	The Honorable Buddy W. Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Public Works Department, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	*http://www.msc.fema.gov/lomc.*	May 31, 2016	120186
Pinellas	City of St. Petersburg, (16–04–0334P).	The Honorable Rick Kriseman, Mayor, City of St. Petersburg, 175 5th Street North, St. Petersburg, FL 33701.	Municipal Services Center, Permit Division, 1 4th Street North, St. Petersburg, FL 33701.	*http://www.msc.fema.gov/lomc.*	May 25, 2016	125148
Sumter	City of Fruitland Park, (15–04–3835P).	The Honorable Chris Bell, Mayor, City of Fruitland Park, 506 West Berckman Street, Fruitland Park, FL 34731.	Building Department, 506 West Berckman Street, Fruitland Park, FL 34731.	*http://www.msc.fema.gov/lomc.*	May 20, 2016	120387
Sumter	Unincorporated areas of Sumter County, (15–04–3835P).	The Honorable Garry Breeden, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	Sumter County Development Department, 7375 Powell Road, Wildwood, FL 34785.	*http://www.msc.fema.gov/lomc.*	May 20, 2016	120296
Georgia:						
Coweta	City of Newnan, (16–04–0314P).	The Honorable Keith Brady, Mayor, City of Newnan, 25 Lagrange Street, Newnan, GA 30263.	Public Works Department, 25 Lagrange Street, Newnan, GA 30263.	*http://www.msc.fema.gov/lomc.*	Jun. 3, 2016	130062
Lee	City of Smithville, (15–04–3746P).	The Honorable Jack Smith, Mayor, City of Smithville, P.O. Box 180, Smithville, GA 31787.	City Hall, 116 South Main Street, Smithville, GA 31787.	*http://www.msc.fema.gov/lomc.*	May 19, 2016	130349
Lee	Unincorporated areas of Lee County, (15–04–3746P).	The Honorable Rick Muggridge, Chairman, Lee County Board of Commissioners, 110 Starksville Avenue North, Leesburg, GA 31763.	Lee County Administration Building, 110 Starksville Avenue North, Leesburg, GA 31763.	*http://www.msc.fema.gov/lomc.*	May 19, 2016	130122
Kentucky						
Barren	City of Glasgow, (15–04–9280P).	The Honorable Dick Doty, Mayor, City of Glasgow, 126 East Public Square, Glasgow, KY 42141.	Public Works Department, 310 West Front Street, Glasgow, KY 42141.	*http://www.msc.fema.gov/lomc.*	Jun. 3, 2016	210007
Barren	Unincorporated areas of Barren County, (15-04-9280P).	The Honorable Michael Hale, Barren County Judge Executive, 117 North Public Square, Suite 3A, Glasgow, KY 42141.	Barren County Government Center, 117 North Public Square, Glasgow, KY 42141.	*http://www.msc.fema.gov/lomc.*	Jun. 3, 2016	210334
Boyd	Unincorporated areas of Boyd County, (15–04–9647P).	The Honorable Steve Towler, Boyd County Judge, P.O. Box 423, Catlettsburg, KY 41129.	Boyd County Floodplain and Code Enforcement Department, 2800 Louisa Street, Catlettsburg, KY 41129.	*http://www.msc.fema.gov/lomc.*	May 27, 2016	210016
Montana:						
Lewis and Clark.	Unincorporated areas of Lewis and Clark County, (15–08–1239P).	The Honorable Andy Hunthausen, Chairman, Lewis and Clark County Board of, Commissioners, 316 North Park Avenue, Helena, MT 59623.	Clark County Law Enforcement Center, 221 Breckenridge Avenue, Helena, MT 59601.	*http://www.msc.fema.gov/lomc.*	May 18, 2016	300038
New Mexico:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Bernalillo	City of Albuquerque, (15–06–0643P).	The Honorable Richard J. Berry, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Planning Department, 600 2nd Street Northwest Albuquerque, NM 87102.	*http://www.msc.fema.gov/lomc.*	May 31, 2016	350002F
North Carolina:						
Orange	Town of Chapel Hill, (15–04–3876P).	The Honorable Mark Kleinschmidt, Mayor, Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	Public Works Department, Stormwater Division, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	*http://www.msc.fema.gov/lomc.*	Apr. 4, 2016	370180
Pennsylvania:						
Dauphin	Township of Lower Paxton, (14–03–3302P).	The Honorable William B. Hawk, Chairman, Township of Lower Paxton Board of Supervisors, 425 Prince Street, Harrisburg, PA 17109.	Township Government Office, 425 Prince Street, Harrisburg, PA 17109.	*http://www.msc.fema.gov/lomc.*	May 20, 2016	420384
Tennessee:						
Williamson	City of Brentwood, (15–04–7313P).	The Honorable Regina Smithson, Mayor, City of Brentwood, 5211 Maryland Way, Brentwood, TN 37027.	City Hall, 5211 Maryland Way, Brentwood, TN 37027.	*http://www.msc.fema.gov/lomc.*	May 19, 2016	470205
Texas:						
Bexar	City of San Antonio, (15–06–2857P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78205.	*http://www.msc.fema.gov/lomc.*	May 18, 2016	480045
Collin	City of Murphy, (15–06–3827P).	The Honorable Eric Barna, Mayor, City of Murphy, 206 North Murphy Road, Murphy, TX 75094.	City Hall, 206 North Murphy Road, Murphy, TX 75094.	*http://www.msc.fema.gov/lomc.*	May 16, 2016	480137
Collin	City of Wylie, (15–06–3379P).	The Honorable Eric Hogue, Mayor, City of Wylie, 300 Country Club Road, Building 100, Wylie, TX 75098.	City Hall, 300 Country Club Road, Wylie, TX 75098.	*http://www.msc.fema.gov/lomc.*	May 26, 2016	480759
Dallas	City of Dallas, (15–06–3297P).	The Honorable Mike Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Trinity Watershed Management Department, 320 East Jefferson Boulevard, Room 307, Dallas, TX 75203.	*http://www.msc.fema.gov/lomc*	May 25, 2016	480171
Dallas	City of DeSoto, (15–06–2944P).	The Honorable Carl Sherman, Mayor, City of DeSoto, 211 East Pleasant Run Road, DeSoto, TX 75115.	Engineering Department, 211 East Pleasant Run Road, DeSoto, TX 75115.	*http://www.msc.fema.gov/lomc.*	May 12, 2016	480172
Denton	City of Frisco, (15–06–4148P).	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Engineering Services Department, 6101 Frisco Square Boulevard, Frisco, TX 75034.	*http://www.msc.fema.gov/lomc.*	May 31, 2016	480134
Denton	Town of Little Elm, (15–06–4148P).	The Honorable David Hillock, Mayor, Town of Little Elm, 100 West Eldorado Parkway, Little Elm, TX 75068.	Development Services Department, 100 West Eldorado Parkway, Little Elm, TX 75068.	*http://www.msc.fema.gov/lomc.*	May 31, 2016	481152
Harris	City of Houston, (15–06–0693P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Public Works and Engineering Department, 1002 Washington AvenueHouston, TX 77002.	*http://www.msc.fema.gov/lomc.*	May 18, 2016	480296
Harris	Unincorporated areas of Harris County, (15–06–0693P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.msc.fema.gov/lomc.*	May 18, 2016	480287
Harris	Unincorporated areas of Harris County, (16–06–0003P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.msc.fema.gov/lomc.*	May 19, 2016	480287

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Hays	City of San Marcos, (15–06–2311P).	The Honorable Daniel Guerrero, Mayor, City of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.	Engineering Department, 630 East Hopkins Street, San Marcos, TX 78666.	*http://www.msc.fema.gov/lomc.*	May 18, 2016	485505
Hays	Unincorporated areas of Hays County, (15–06–2311P).	The Honorable Bert Cobb, M. D., Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	Hays County Environmental Health Department, 1251 Civic Center Loop, San Marcos, TX 78666.	*http://www.msc.fema.gov/lomc.*	May 18, 2016	480321
Kaufman	City of Terrell, (15–06–2731P).	The Honorable Hal Richards, Mayor, City of Terrell, 201 East Nash Street, Terrell, TX 75160.	City Hall, 201 East Nash Street, Terrell, TX 75160.	*http://www.msc.fema.gov/lomc.*	May 16, 2016	480416
Tarrant	City of Fort Worth, (15–06–0830P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	City Hall, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.msc.fema.gov/lomc.*	May 31, 2016	480596
Virginia:						
Mecklenburg	Unincorporated areas of Mecklenburg County, (15–03–1485P).	The Honorable Glenn E. Barbour, Chairman, Mecklenburg County Board of Supervisors, P.O. Box 729, South Hill, VA 23970.	Mecklenburg County Zoning Department, P.O. Box 307, Boydton, VA 23917.	*http://www.msc.fema.gov/lomc.*	May 26, 2016	510189
Wyoming:						
Teton	Unincorporated areas of Teton County, (16–08–0063P).	The Honorable Barbara Allen, Chair, Teton County Board of Commissioners, P.O. Box 3594, Jackson, WY 83001.	Teton County Engineering Department, 320 South King Street, Jackson, WY 83001.	*http://www.msc.fema.gov/lomc.*	May 26, 2016	560094

[FR Doc. 2016–07791 Filed 4–4–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N066; FXES11120800000–156–FF08EVEN00]

Low-Effect Habitat Conservation Plan for The Terrace of Scotts Valley in the City of Scotts Valley, Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Mr. Chris Perri of Apple Homes Development for a 5-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for "take" of the federally endangered Mount Hermon June beetle likely to occur incidental to the construction of 20 new townhomes, garages, and associated landscaping and infrastructure at two existing legal parcels in Scotts Valley, Santa Cruz County, California. We invite comments from the public on the application package, which includes the Low-Effect Habitat Conservation Plan for The Terrace of Scotts Valley.

DATES: To ensure consideration, please send your written comments by May 5, 2016.

ADDRESSES: You may download a copy of the Habitat Conservation Plan, draft Environmental Action Statement and Low-Effect Screening Form, and related documents on the Internet at *http://www.fws.gov/ventura/*, or you may request copies of the documents by U.S. mail to our Ventura office or by phone (see **FOR FURTHER INFORMATION CONTACT**). Please address written comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Chad Mitcham, Fish and Wildlife Biologist, by U.S. mail to the Ventura office, or by telephone at (831) 768–7794.

SUPPLEMENTARY INFORMATION: We have received an application from Mr. Chris Perri for a 5-year incidental take permit under the Endangered Species Act of 1973, as amended. The application addresses the potential for "take" of the federally endangered Mount Hermon June beetle (*Polyphylla barbata*) likely to occur incidental to the construction of 20 new townhomes, garages, and associated landscaping and infrastructure at two existing legal parcels in Scotts Valley, Santa Cruz County, California. The applicant would implement a conservation program to minimize and mitigate project activities that are likely to result in take of the Mount Hermon June beetle as described in the plan. We invite comments from the public on the application package, which includes the Low-Effect Habitat Conservation Plan for The Terrace of Scotts Valley. This proposed action has been determined to be eligible for a Categorical Exclusion under the National Environmental Policy Act of 1969, as amended.

Background

The U.S. Fish and Wildlife Service (Service) listed the Mount Hermon June beetle as endangered on January 24, 1997 (62 FR 3616). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the take of fish or wildlife species listed as endangered or threatened. "Take" is defined under the Act to include the following activities: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532); however, under section

10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. The Act defines "Incidental Take" as take that is not the purpose of carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are provided at 50 CFR 17.32 and 17.22, respectively. Issuance of an incidental take permit must not jeopardize the existence of federally listed fish, wildlife, or plant species.

Take of listed plants is not prohibited under the Act unless such take would violate State law. As such, take of plants cannot be authorized under an incidental take permit. Plant species may be included on a permit in recognition of the conservation benefits provided them under a habitat conservation plan. All species, including plants, covered by the incidental take permit receive assurances under our "No Surprises" regulations (50 CFR 17.22(b)(55) and 17.32(b)(5)). In addition to meeting other specific criteria, actions undertaken through implementation of the Habitat Conservation Plan (HCP) must not jeopardize the continued existence of federally listed animal or plant species.

Applicant's Proposal

Mr. Chris Perri (hereafter, the applicant) has submitted a Low-Effect HCP in support of his application for an incidental take permit (ITP) to address take of Mount Hermon June beetle that is likely to occur as the result of direct impacts to up to 2.62 acres (ac) (114,214 square feet (sf)) of degraded sandhills habitat occupied by the species. Take would be associated with the construction of the residential development on two existing parcels legally described as Assessor Parcel Number's 022–162–69 and 022–162–74. The current site address is 400 Glen Canyon Road in Scotts Valley, Santa Cruz County, California. The applicant is requesting a permit for take of Mount Hermon June beetle that would result from "covered activities" that are related to the construction of 20 townhomes, garages and associated landscaping/infrastructure.

The applicant proposes to avoid, minimize, and mitigate take of Mount Hermon June beetle associated with the covered activities by fully implementing the HCP. The following measures will be implemented: (1) Temporary fencing and signs will be installed to clearly delineate the boundaries of the project; (2) if construction occurs during the flight season (considered to be between May and October, annually), exposed soils will be covered with erosion control fabric or other impervious materials to prevent any dispersing Mount Hermon June beetles from burrowing into exposed soil at the construction site; (3) employment of a Service-approved entomologist to capture and relocate into suitable habitat and out of harm's way any Mount Hermon June beetle larvae unearthed during construction activities; (4) all outdoor night lighting will use light bulbs certified not to attract nocturnally active insects, in order to minimize disruption of Mount Hermon June beetle breeding behavior during the adult flight season; and (5) secure off-site mitigation at a ratio of 1:1 to mitigate for permanent habitat impacts through the acquisition of 2.62 ac (114,214 sf) of conservation credits at the Zayante Sandhills Conservation Bank. The applicant will fund up to $733,284 to ensure implementation of all minimization measures, monitoring, and reporting requirements identified in the HCP.

In the proposed HCP, the applicant considers two alternatives to the proposed action: "No Action" and "Redesigned Project." Under the "No Action" alternative, an ITP for the Terrace at Scotts Valley would not be issued. The Terrace at Scotts Valley would not be built, and the purchase of conservation credits would not be provided to effect recovery actions for Mount Hermon June beetle. Additionally, since the property is privately owned, there are ongoing economic considerations associated with continued ownership without use, which includes payment of associated taxes. The sale of this property for purposes other than the identified activity is not considered economically feasible. Because of economic considerations and because the proposed action results in a net benefit for the covered species, the No Action Alternative has been rejected. Under the "Redesigned Project" alternative, the project would be redesigned to avoid or further reduce take of Mount Hermon June beetle.

The proposed project has already been designed to minimize impacts to the species as the project area does not contain Zayante sands, the preferred habitat of the species. Reduction in the size of the development would not result in a significant reduction in take and is not practical. Additionally, the proposed project provides greater habitat conservation as the purchase of conservation credits at a ratio of 1:1 would result in the protection and management of preferred habitat for the species. As such, the "Project Redesign" alternative has also been rejected.

Our Preliminary Determination

We are requesting comments on our preliminary determination that the applicant's proposal will have a minor or negligible effect on the Mount Hermon June beetle and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an ITP qualify for categorical exclusion under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

However, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the ITP would comply with section 7(a)(2) of the Act by conducting an intra-Service Section 7 consultation.

Public Review

We provide this notice under section 10(c) of the Act and the National Environmental Policy Act of 1969, as amended (NEPA), NEPA's public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We are requesting comments on our determination that the applicants' proposal will have a minor or neglible effect on the Mount Hermon June beetle and that the plan qualifies as a low-effect HCP as defined by our 1996 Habitat Conservation Planning Handbook. We will evaluate the permit application, including the plan and comments, we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will use the results of our internal Service consultation, in combination with the above findings, in our final analysis to determine whether to issue the permits. If the requirements are met, we will issue an ITP to the applicant for the incidental take of Mount Hermon June beetle. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: March 29, 2016.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2016–07795 Filed 4–4–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N043; FXES11120100000–167–FF01E00000]

Proposed Amendment to the Willamette Valley Native Prairie Habitat Programmatic Safe Harbor Agreement for the Fender's Blue Butterfly in Benton, Lane, Linn, Marion, Polk, and Yamhill Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend an enhancement of survival (EOS) permit issued to itself on May 26, 2009, pursuant to the Endangered Species Act of 1973, as amended (ESA). The EOS permit is associated with a programmatic Safe Harbor Agreement (SHA) developed for the conservation of the federally-listed endangered Fender's blue butterfly within the Willamette Valley in Oregon. The proposed amendment would extend the term of the SHA and the permit for an additional 11 years. The amendment includes adding Washington County, Oregon, to the geographical area covered by the SHA and the permit. The amended permit would continue to authorize the Service to extend incidental take coverage to eligible landowners who are willing to carry out habitat management actions that benefit the Fender's blue butterfly by enrolling landowners under the SHA through Certificates of Inclusion. We request comments from the public on the proposed amendment of the EOS permit and the SHA, and a draft environmental action statement (EAS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA).

DATES: Written comments on the permit amendment, SHA amendment, and the EAS for the NEPA categorical exclusion determination must be received from interested parties no later than May 5, 2016.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Service Agreement Amendment.

- *Internet:* Documents may be viewed on the Internet at *http://www.fws.gov/oregonfwo/articles.cfm?id=149489462.*
- *Email: WVAmendmentcomments@fws.gov.* Include "Willamette Valley SHA Amendment" in the subject line of the message or comments.
- *U.S. Mail:* State Supervisor, Oregon Fish and Wildlife Office; U.S. Fish and Wildlife Service; 2600 SE 98th Avenue, Suite 100; Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: Willamette Valley SHA Amendment.
- *In-Person Viewing, Pickup or Drop-off:* Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Kathy Roberts, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone: 503–231–6179, facsimile: 503–231–6195. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2009, the Service issued an EOS permit to the Service's Oregon Fish and Wildlife Office (OFWO) pursuant to section 10(a)(1)(A) of the ESA. The EOS permit is associated with a programmatic SHA developed for the conservation of the federally-listed endangered Fender's blue butterfly (*Icaricia icarioides fenderi*) within the Willamette Valley in Oregon. The SHA is administered and implemented by the OFWO and the Service's Willamette Valley National Wildlife Refuge Complex (WV Refuge Complex). The OFWO serves as the "permittee." The WV Refuge Complex is a signatory to the SHA and works jointly with the OFWO on all aspects of the SHA. The OFWO may enroll eligible interested non-Federal landowners (cooperators) through Certificates of Inclusion under the SHA. The WV Refuge Complex can also develop and administer Certificates of Inclusion where they are involved in activities on the cooperator's enrolled lands as a project partner.

The geographic area covered by the current SHA and permit includes the originally known and potential range of the Fender's blue butterfly, which includes prairie habitat within Benton, Lane, Linn, Marion, Polk, and Yamhill counties of Oregon. Properties that are eligible for enrollment are non-Federal lands where the Fender's blue butterfly occurs or could occur through colonization, translocation, or reintroduction. Activities under the SHA may also benefit the federally-listed threatened Kincaid's lupine (*Lupinus sulphureus* ssp. *kincaidii*), which is a larval host plant for Fender's blue butterfly. However, Kincaid's lupine is not included as a "covered species."

The current term of the SHA is 15 years and expires on May 25, 2024. The current term of the permit is 25 years and expires on May 25, 2034. Since the permit was issued on May 26, 2009, the Service has enrolled a number of eligible landowners under Certificates of Inclusion for an average period of 10 years each.

Proposed Amendment

In order to continue issuing new 10-year Certificates of Inclusion, the

Service needs to extend the term of the existing SHA for at least an additional 10 years. Therefore, the Service is proposing to extend the term of the SHA for an additional 11 years, from May 25, 2024 to May 25, 2035, and extend the term of the permit for an additional 11 years, from May 25, 2034 to May 25, 2045. When the Service listed the Fender's blue butterfly as endangered and Kincaid's lupine as threatened in 2000 (65 FR 3875) Washington County was not included as part of the range of either species because no previous populations had been identified in Washington County. In 2011, however, a population of Fender's blue butterfly and Kincaid's lupine was discovered on the north side of Henry Hagg Lake, on Bureau of Reclamation land, in Washington County, Oregon. The Service is, therefore, proposing to amend the existing permit and SHA to include Washington County within the geographical area covered by the SHA and the permit.

The amended permit would continue to authorize the Service to extend incidental take coverage with assurances to eligible landowners who are willing to carry out habitat management actions that would benefit the Fender's blue butterfly by enrolling the landowners under the SHA as cooperators through issuance of Certificates of Inclusion.

National Environmental Policy Act Compliance

The proposed amendment to the permit and the SHA is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). We have made a preliminary determination that the proposed amendments to the EOS permit and the SHA are eligible for categorical exclusion under the NEPA. The basis for our preliminary determination is contained in an Environmental Action Statement (EAS), which is available for public review (see **ADDRESSES**).

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

The Service will evaluate the proposed amendment to the permit and the SHA, associated documents, and comments submitted thereon to determine whether the amendment meets the requirements of section 10(a) of the ESA and the requirements of NEPA. We will not make the final NEPA and permit decisions until after the end of the 30-day public comment period on this notice, and we will fully consider all comments we receive during the public comment period. If we determine that all the requirements are met, we will sign the amended SHA and issue an amended EOS permit under section 10(a)(1)(A) of the ESA to the Service's OFWO. The OFWO will continue to serve as the permit holder, and continue to extend coverage to interested eligible landowners for the take of Fender's blue butterfly, incidental to otherwise lawful activities in accordance with the terms of the SHA, Certificates of Inclusion, and the EOS permit.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

Rollie White,

Acting State Supervisor, Oregon Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2016–07796 Filed 4–4–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20585; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE., and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Omaha District at the address in this notice by May 5, 2016.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Omaha District. The human remains and associated funerary objects were removed from site 39BF243, in Buffalo County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by State Archaeological Research Center (SARC) and Omaha District professional staff in consultation with representatives of the Yankton Sioux Tribe of South Dakota.

History and Description of the Remains

In 1964, human remains representing, at minimum, three individuals were removed from site 39BF243 in Buffalo County, SD. They are presently located at the SARC and are under the control of the Omaha District. The human remains were removed by Robert Gant, Assistant Director of the W.H. Over Museum (WHOM), when three coffin burials were disturbed by highway construction activities at Big Bend Dam, along the Missouri River. Funerary objects were associated with the first two individuals, but not the third. The human remains and associated funerary objects were transported to WHOM.

In 1974, the collections from Individuals 1 and 2 were transferred to the newly established SARC. At that time, the location of the human remains from Individual 3 was not known. The human remains from Individuals 1 and 2 were then transferred to the University of Tennessee-Knoxville to be inventoried by Dr. William Bass. After the return of the human remains to SARC, a portion of the human remains from Individual 2 were repatriated to the Oglala Lakota Nation in 1982.

In 1993, SARC conducted a review of the collections and located the human remains and associated funerary objects from Individual 1, identified as a 1.5 to 2.5 year old infant. Also located was additional skeletal material from Individual 2, identified as a child between 6 and 8 years of age, along with the associated funerary objects. In 2000, the human remains of Individual 3, identified as an adult male between 18 and 22 years, were found at the collection center for the Archeology Lab, Augustana College-Sioux Falls. They were then transferred to SARC and placed with the collections from Individuals 1 and 2. No known individuals were identified.

The 11,143 associated funerary objects are 6 copper beads, 10,991 glass beads, 1 fragment of a paper book, 3 fragment of a glass bottle, 31 buttons (metal, glass, pottery), 8 toy fragments (china), 9 cloth fragments, 2 coffin wood fragments, 1 metal and wood comb, 1 Bisque doll, 5 faunal fragments, 1 floral fragment, 1 glass knob, 2 iron rings, 1 iron cup handle, 4 leather fragments, 1 lot of wood, metal, and cloth, 9 metal nails, 3 fragments of paper, 1 plastic flower pendant, 1 pewter pedestal, 13 fragments of ironstone saucer, 1 sewing pin book, 1 tin pill box, 40 fragments tin plate and cup, 3 tin spoons, 2 toy sad irons, and 1 wooden thread spool.

The human remains were collected from coffin burials and are determined to be Native American based the location of the site near a Native American village at the townsite of Fort Thompson and the funerary objects associated with the burials. Based on the use of coffins, the mix of European and Native elements among the funerary objects, and the manufacturing dates for an ironstone saucer, a Bisque done, wire nails, and pink seed beads, the human remains date after A.D. 1870. This represents the Early Reservation Period at the nearby Crow Creek Indian Reservation, which, by the 1870s, was inhabited by the Yanktonai. The associated funerary objects are consistent with Yanktonai historic burials. Today, the Yanktonai are represented by the Yankton Sioux Tribe of South Dakota.

Determinations Made by the Omaha District

Officials of the Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 11,143 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Yankton Sioux Tribe of South Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Ave., Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Yankton Sioux Tribe of South Dakota may proceed.

The Omaha District is responsible for notifying the Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: March 10, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07768 Filed 4–4–16; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20506; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Grand Rapids Public Museum, Grand Rapids, Michigan

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Grand Rapids Public Museum in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Grand Rapids Public Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Grand Rapids Public Museum at the address in this notice by May 5, 2016.

ADDRESSES: Andrea Melvin, Collections Curator, Grand Rapids Public Museum, 272 Pearl Street NW., Grand Rapids, MI 49506, telephone (616) 929–1808, email *amelvin@grpm.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Grand Rapids Public Museum, Grand Rapids, MI, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

On an unknown date, one unassociated funerary object was removed from a Native American grave in Umatilla County, OR. It was acquired by the Grand Rapids Public Museum from the Ruth Herrick Estate on September 10, 1974. The object is a string of 25 olivella shell beads together with an attached note from the collector stating, "from an Indian grave near Umatilla, Oregon on Columbia River." Digital images of the object were reviewed by The Confederated Tribes of the Umatilla Indian Reservation's Preservation Department. It was determined that the beads were excavated from the burial area of the *Imatalamláma* (Umatilla) which was located on the Columbia River and at the mouth of the Umatilla River. As the human remains with which the beads were placed are not known to be in the possession or control of any Federal agency or museum, the beads are therefore unassociated funerary objects culturally affiliated with the Umatilla Tribes. During consultation, the Umatilla Tribes provided ethnographic, oral traditional, linguistic and archaeological evidence showing the beads were excavated within the ceded lands of the Umatilla.

On an unknown date, 3 unassociated funerary objects were removed from Walla Walla County, WA. They were acquired by the Grand Rapids Public Museum from the Ruth Herrick Estate on September 10, 1974. The objects are: One lot of 5 hawk claw pendants together with a note that describes where they were excavated: "Columbia River grave, Walla Walla Co. Washington;" a string of Old Hudson's Bay Fur Company beads that is comprised of 6 large round cobalt beads, 5½ large round red-on-yellow opaque beads, and 58 round opaque light-blue pony beads with a note stating: "Old Hudson Bay Fur -Co. Post, Indian Trade Beads, Fort Walla-Walla Washington;" and a string of 19 dark blue glass Hudson's Bay Company beads with a note stating: "Ft. Walla-Walla Washington." Digital images of the objects were reviewed by The Confederated Tribes of the Umatilla Indian Reservation's Preservation Department. It was determined that the beads were excavated from the burial areas of the Weyíiletpuu, Imatalamláma and Walúulapam. As the human remains with which these objects were placed are not know to be in the possession or control of any Federal Agency or museum, they are unassociated funerary objects. During consultation, the Umatilla Tribes provided ethnographic, oral traditional, linguistic and archaeological evidence that the beads were excavated in the Walawála (Walla Walla) area alongside the Columbia River, that was the homeland of the Walúulapam and Weyíiletpuu People.

Determinations Made by the Grand Rapids Public Museum

Officials of the Grand Rapids Public Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 4 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Andrea Melvin, Collections Curator, Grand Rapids Public Museum, 272 Pearl Street NW., Grand Rapids, MI 49506, telephone (616) 929–1808, email *amelvin@grpm.org,* by May 5, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Confederated Tribes of the Umatilla Indian Reservation may proceed.

The Grand Rapids Public Museum is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation that this notice has been published.

Dated: March 3, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07758 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20607; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of Anthropology and Middle Eastern Cultures, Mississippi State University, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of Anthropology and Middle Eastern Cultures at Mississippi State University has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Department of Anthropology and Middle Eastern Cultures at Mississippi State University. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Department of Anthropology and Middle Eastern Cultures at Mississippi State University at the address in this notice by May 5, 2016.

ADDRESSES: Dr. Michael L. Galaty, Department of Anthropology and Middle Eastern Cultures, Mississippi State University, PO Box AR, 210 Cobb Building, Mississippi State, MS 39762, telephone (662)325–7525, email *mgalaty@anthro.msstate.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Department of Anthropology and Middle Eastern Cultures at Mississippi State University. The human remains were removed from Clay and Monroe Counties, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Department of Anthropology and Middle Eastern Cultures at Mississippi State University professional staff in consultation with representatives of the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Mississippi Band of Choctaw Indians; The Chickasaw Nation; and The Choctaw Nation of Oklahoma.

History and Description of the Remains

In 1982, human remains representing, at minimum 16 individuals were removed from the Hang Kettle #1 site, 22CL620, in Clay County, MS, by Mississippi State University (MSU) archeologist Richard Marshall after being exposed by floodwaters. The human remains have been in the possession of the Department of Anthropology and Middle Eastern Cultures at Mississippi State University since their removal. No known individuals were identified. No associated funerary objects are present. The human remains date to the Late Woodland period, A.D. 700 to 1000.

In 1970, human remains representing, at minimum four individuals were removed from an unidentified site, possibly 22CL500, in Clay County, MS, by MSU archeologists. The human remains have been in the possession of the Department of Anthropology and Middle Eastern Cultures at Mississippi State University since their removal. No known individuals were identified. No associated funerary objects are present. No additional information regarding the age or sex of the human remains is known.

In 1972, human remains representing, at minimum one individual were removed from an unidentified site in Clay County, MS. The human remains have been in the possession of the Department of Anthropology and Middle Eastern Cultures at Mississippi State University since their removal. No known individuals were identified. No associated funerary objects are present. No additional information regarding the age or sex of the human remains is known.

In 1973, human remains representing, at minimum one individual were removed from an unidentified site in Monroe County, MS, by John Gibbs. The human remains have been in the possession of the Department of Anthropology and Middle Eastern Cultures at Mississippi State University since their removal. No known individuals were identified. No associated funerary objects are present. No additional information regarding the age or sex of the human remains is known.

Determinations Made by the Department of Anthropology and Middle Eastern Cultures at Mississippi State University

Officials of the Department of Anthropology and Middle Eastern Cultures at Mississippi State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their burial context and location.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 22 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Chickasaw Nation.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Chickasaw Nation.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Michael L. Galaty, Department of Anthropology and Middle Eastern Cultures, Mississippi State University, PO Box AR, 210 Cobb Building, Mississippi State, MS 39762, telephone (662)325–7525, email *mgalaty@anthro.msstate.edu,* by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Chickasaw Nation may proceed.

The Department of Anthropology and Middle Eastern Cultures at Mississippi State University is responsible for notifying the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Mississippi Band of Choctaw Indians; The Chickasaw Nation; and The Choctaw Nation of Oklahoma that this notice has been published.

Dated: March 14, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07774 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20611; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace, St. Ignace, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace at the address in this notice by May 5, 2016.

ADDRESSES: Shirley Sorrels, Director, Museum of Ojibwa Culture and Marquette Mission Park, 500 North State Street, St. Ignace, MI 49781, telephone (906) 430–0446, email *ojibmus@lighthouse.net*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace, St. Ignace, MI. The human remains and associated funerary objects were removed from Marquette Mission Site (20MK82), Mackinac County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace professional staff in consultation with representatives of the Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe; Chippewa Cree of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree of the Rocky Boy's Reservation, Montana; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Keweenaw Bay Indian Community, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Little Traverse Bay Bands of Odawa Indians, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe, Oklahoma; St. Croix Chippewa Indians of Wisconsin; and Wyandotte Nation.

On September 8, 2015, an invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of Lake Superior Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe, Oklahoma; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and Wyandotte Nation (hereinafter referred to as "The Tribes"). The invitation was followed by telephone calls and emails.

On November 13, 2015, an offer of joint disposition was extended to The Tribes.

History and Description of the Remains

On August 21, 1986, during an excavation of the site by an archeologist from Michigan State University (MSU), human remains representing, at minimum, three individuals were removed from the Marquette Mission Site (20MK82) in Mackinac County, MI. In September 1986, the human remains and cultural items found in the burial fill were transported to MSU where they continue to be housed. An infant and two adults of indeterminate sex were identified. No known individuals were identified. The three associated funerary objects are 1 aqua glass pendant and 2 seed beads.

The archeological site is within the Marquette Mission Park. The Museum of Ojibwa Culture manages the Park. Both the Park and the Museum are under the auspices of the City of St. Ignace. Based on the mode of burial and typological cross dating of seed beads found in the burial fill, the time period of burial is A.D. 1673–1701 when French, Huron, and Odawa (Ottawa) people were present in the area.

Determinations Made by the Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace

Officials of the Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the history of the site, the time period, and the nature of the burial.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, or Treaties, Acts of Congress, or Executive Orders the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Tribes. To date, the Saginaw Chippewa Indian Tribe of Michigan and Sault Ste. Marie Tribe of Chippewa Indians, Michigan, have requested disposition jointly.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Shirley Sorrels, Director, Museum of Ojibwa Culture and Marquette Mission Park, 500 North State Street, St. Ignace, MI 49781, telephone (906) 430–0446, email *ojibmus@lighthouse.net*, by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed. To date, the Saginaw Chippewa Indian Tribe of Michigan and Sault Ste. Marie Tribe of Chippewa Indians, Michigan, have requested disposition jointly.

The Museum of Ojibwa Culture and Marquette Mission Park, City of St. Ignace is responsible for notifying The Tribes that this notice has been published.

Dated: March 14, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07775 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20603; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Illinois Historic Preservation Agency, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Illinois Historic Preservation Agency, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Illinois Historic Preservation Agency. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Illinois Historic Preservation Agency at the address in this notice by May 5, 2016.

ADDRESSES: Ryan Prehn, Illinois Historic Preservation Agency, 313 South Sixth Street, Springfield, IL 62701, telephone (217) 558–8950, email *Ryan.Prehn@Illinois.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Illinois Historic Preservation Agency, Springfield, IL, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

In or around 1918, one cultural item were removed from Tama, in Tama County, IA. The item was given to Mr. John Hauberg by a member of the Meskwaki tribe. In 1939, this cultural item was donated to the Hauberg Indian Museum in Rock Island, IL, by Mr. John Hauberg. The object has remained in the collection of the museum since, and is now under the control of the Illinois Historic Preservation Agency at the Black Hawk State Historic Site. The one object of cultural patrimony is one Bear Claw Necklace.

Through consultation with Mr. Johnathan L. Buffalo, a representative of the Meskwaki Nation and the Sac & Fox Tribe of the Mississippi in Iowa, it has been shown that the Bear Claw Necklace is an object of cultural patrimony, owing to its use as a symbol of tribal governance within the tribe. Mr. Buffalo has demonstrated that this object holds political, social, and ceremonial significance for the Meskwaki, and has ongoing historical, traditional and cultural importance to the tribe. Therefore, it has been determined that the Bear Claw Necklace falls under the definition of objects of cultural patrimony for the purposes of repatriation under NAGPRA.

Determinations Made by the Illinois Historic Preservation Agency

Officials of the Illinois Historic Preservation Agency have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Sac & Fox Tribe of the Mississippi in Iowa.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Ryan Prehn, Illinois Historic Preservation Agency, 313 South Sixth

Street, Springfield, IL 62701, telephone (217) 558–8950, email *Ryan.Prehn@Illinois.gov,* by May 5, 2016. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to Sac & Fox Tribe of the Mississippi in Iowa may proceed.

The Illinois Historic Preservation Agency is responsible for notifying the Sac & Fox Tribe of the Mississippi in Iowa that this notice has been published.

Dated: March 11, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07773 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20582; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of Defense Army Corps of Engineers, Omaha District, Omaha, NE and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Omaha District. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Omaha District at the address in this notice by May 5, 2016.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Omaha District, Omaha, NE., that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

Cultural items consisting of 64 unassociated funerary objects were removed from site 39CA4, the Anton Rygh Site, in Campbell County, SD. They are presently located at the South Dakota State Archaeological Research Center (SARC) and are under the control of the Omaha District.

The Anton Rygh site was a large fortified village on the east bank of the Missouri River and first reported by W.H. Over Museum in the 1920s. Excavations at the site began in 1932, and over the course of the next 50 years, over 100 individuals have reportedly been removed from the site. A minimum of 66 of these individuals were removed between 1957 and 1959 during excavations sponsored by the Smithsonian Institution River Basic Survey (RBS). A total of 15 individuals from the 1957 to 1959 excavations are stored at SARC and reported in a separate Notice of Inventory Completion.

SARC currently has 64 funerary objects from the RBS collections that are not associated with any individuals currently held by SARC and under control of the Omaha District. The excavation records clearly show these items as having been removed from the burial of a specific individual. These 64 unassociated funerary objects are 13 scapula bone hoes and knives, 1 bone awl, 1 bone whistle, 1 lithic biface, 1 lithic projectile point, 1 dog cranium, and 46 ceramic sherds.

The Anton Rygh site is a Plains Village Tradition multi-component earth lodge village. House structures, burials, cache pits, fortification features, and artifact types suggest at least two levels of occupation. The levels represent an extended Middle Missouri (A.D. 1000–1500) variant while the upper levels represent Extended (A.D. 1500–1675) and Post Contact (A.D. 1675–1780) Coalescent variants. Funerary objects were removed from burials throughout all levels of the site, but their temporal differentiation cannot be determined based on current records.

Archeological, anthropological, and physical anthropological evidence indicate the Extended Middle Missouri are ancestral Mandan, and the Extended Coalescent and Post Contact Coalescent are ancestral Arikara. Both the Mandan and Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation. Consultation with the Three Affiliated Tribes of the Fort Berthold Reservation indicates that these objects represent the kinds of objects that are placed with individuals at the time of death.

Determinations Made by the Omaha District

Officials of the Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 64 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by May 5, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

The Omaha District is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: March 10, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07770 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20586]; [PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE., and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Omaha District. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Omaha District at the address in this notice by May 5, 2016.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Omaha District, Omaha, NE., that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Cultural items consisting of 1,045 unassociated funerary objects were removed from 39DW2, the Four Bear site, Dewey County, SD. They are presently located at the South Dakota SARC and are under the control of the Omaha District.

The Four Bear site, 39DW2 was an earthlodge village on the west bank of the Missouri River. It was first visited in the 1930s by Alfred Bowers of the Smithsonian Institution. Between 1958 and 1959, salvage excavations were conducted at the site prior to inundation by flood waters of the Oahe Reservoir. At least 100 sets of human remains were recovered. Twelve sets of human remains are currently housed at SARC and have been reported under a separate Notice of Inventory Completion. In addition, a total of 64 sets of human remains were reburied either on Four Bear site or at site 39ST15. The whereabouts of the remaining 24 sets of human remains is currently unknown.

SARC currently has physical custody of 1,045 funerary objects that were originally removed with individuals whose remains were either reburied or whose present location is unknown. The excavation records clearly show that all these items were removed from the burials of specific individuals. The 1,045 unassociated funerary objects are 572 shell and glass beads, 4 bone tools, 34 ceramic sherds, 1 ceramic vessel, 333 copper sleeves crimped on leather, 1 bundle of copper sleeves with hide, 7 cooper and brass tubes, 2 metal knife blades, 1 iron wire bracelet, 20 copper ornaments, 2 leather earrings, 1 dog cranium, 23 faunal fragments, 1 mussel shell, 3 chert endscrapers, 1 lot of plant fiber, 2 lots of wood fragments, 7 individual wood fragments, 13 pieces of soil with red ochre, and 17 seeds.

The Four Bear site, 39 DW2 was probably occupied during the last two decades of the 1700s, which falls into the Disorganized Coalescent variant (A.D. 1780–1862) of the Plains Village Tradition. At least 36 circular lodges were identified. The excavators located a cemetery associated with the village a short distance to the southwest of the village site. In addition to the mortuary practices and types of funerary objects in evidence, the architecture of the circular earth lodges, community plan, physical location, and ceramic types support the association of the site to the late 1700s. It is possible that the site was first documented in William Clark's journal on October 6, 1804, as well as being mentioned in journals of members of the Lewis and Clark Expedition. The journals mention that the "Ricara" had left the village the prior spring. Populations associated with the Coalescent tradition within this area and time frame, as evidenced by the ethnographic and archeological record, are believed to be ancestral to the Arikara. The Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. Consultation with the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, indicates that these objects represent the kinds of objects that are placed with individuals at the time of death.

Determinations Made by the Omaha District

Officials of the Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 1,045 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from the specific burial sites of Native American individuals.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by May 5, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

The Omaha District is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North

Dakota, that this notice has been published.

Dated: March 10, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07767 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20406; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE., and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Omaha District at the address in this notice by May 5, 2016.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Omaha District. The human remains and associated funerary objects were removed from site 39DW02 (Four Bear), in Dewey County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the State Archaeological Research Center (SARC) and Omaha District professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

Between 1958 and 1959, human remains representing, at minimum, 12 individuals and 868 associated funerary objects were collected from 39DW2, the Four Bear site, Dewey County, SD. They are presently located at the SARC and are under the control of the Omaha District.

The Four Bear site, 39DW2, was an earthlodge village on the west bank of the Missouri River. It was visited in the 1930s by Alfred Bowers of the Smithsonian Institution. Between 1958 and 1959, salvage excavations were conducted at the site prior to inundation by flood waters of the Oahe Reservoir. At least 100 sets of human remains were recovered. Twelve sets of human remains, representing 5 adults, 3 children, and 4 infants, are currently housed at SARC. A total of 64 sets of human remains were reburied either at Four Bear site or at site 39ST15. The whereabouts of the remaining 24 sets of human remains are currently unknown. Based on burial type, associated artifacts, the remaining archeological context, and physical anthropological assessment, the 12 individuals presently located at SARC from the Four Bear site are Native American. No known individuals were identified. The 868 associated funerary objects are 5 shell and glass beads, 30 ceramic sherds, 819 copper sleeves crimped on leather, 5 wire earrings, 3 fragments of animal hide, 1 lot of animal hides, 1 faunal fragment, 2 pieces of clay and soil, 1 seed cache, and 1 shell tool.

The Four Bear site, 39 DW2, was probably occupied during the last two decades of the 1700s, which falls into the Disorganized Coalescent variant (A.D. 1780 to 1862) of the Plains Village Tradition. At least 36 circular lodges were identified. The excavators located a cemetery associated with the village a short distance southwest of the village site. In addition to the mortuary practices and types of funerary objects in evidence, the architecture of the circular earth lodges, community plan, physical location, and ceramic types support the association of the site to the late 1700s. It is possible that the site was first documented in William Clark's journal on October 6, 1804, as well as being mentioned in journals of members of the Lewis and Clark Expedition. The journals mention that the "Ricara" had left the village the prior spring. Populations associated with the Coalescent tradition within this area and time frame, as evidenced by the ethnographic and archeological record, are believed to be ancestral to the Arikara. The Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations Made by the Omaha District

Officials of the Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 868 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil*, by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: March 10, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07766 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20509; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Mobile District, Mobile, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Mobile District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Mobile District at the address in this notice by May 5, 2016.

ADDRESSES: Mr. Michael Fedoroff, U.S. Army Corps of Engineers, Mobile District, 109 St. Joseph Street, P.O. Box 2288, Mobile, AL 36628–0001, telephone (251) 694–4114, email *Michael.P.Fedoroff@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Mobile District. The human remains and associated funerary objects were removed from the Burnt Village Site, 9TP9, Troup County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Mobile District in consultation with representatives of the following Indian tribes: Absentee-Shawnee Tribe Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town; Catawba Indian Nation (aka Catawba Tribe of South Carolina); Cherokee Nation; Chitimacha Tribe of Louisiana; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians; Kialegee Tribal Town; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Shawnee Tribe; Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole of Oklahoma; Thlopthlocco Tribal Town; Tunica-Biloxi Indian Tribe; and United Keetoowah Band of Cherokee Indians in Oklahoma, hereafter "The Consulted Tribes."

History and Description of the Remains

Between 1966 and 1968, human remains representing, at minimum, 21 individuals were removed from the Burnt Village Site in Troup County, GA. The excavations were conducted by the University of Georgia, on behalf of the Mobile District's response to the construction of the West Point Lake reservoir. The human remains have been housed at the University of Georgia since their removal from the site, but are under the control of Mobile District. The human remains were determined to be Native American based on skeletal morphology, burial and site context, and artifact associations. No known individuals were identified during the excavations. The 5,281 associated funerary objects are 6 metal armbands, 37 metal bells, 5 copper bracelets, 64 metal buckles and fasteners, 34 metal buttons, 14 metal rings, 3 metal neckbands, 33 metal cone ornaments, 31 metal ornaments, 33 metal tinklers, 5 metal fragments with beads, 4,067 beads (glass, shell, clay, seed), 11 lots of beads, 3 shell ornaments, 3 brass thimbles, 3 metal nails, 2 fragments iron knife blade, 2 pieces horse bridle, 3 metal tools, 28 pieces of metal/metal fragments, 2 ceramic balls/knobs, 2 ceramic bowls, 441 prehistoric ceramic sherds, 6 clay fragments, 27 pieces of daub, 14 lithic flakes or shatter, 2 lithic projectile points, 1 stone gaming piece, 4 pipe stems, 19 fragments of fabric, 2 fragments of fabric with beads, 10 pieces of cord, thread, or string, 1 mirror fragment, 3 glass fragments, 1 glass bottle, 1 cork, 7 musket balls, 9 gun flints, 6 pieces unmodified shell,1 lot modified mica, 1 piece mica, 172 pieces unmodified fauna, 1 piece modified fauna, 24 fire cracked rock, 89 rocks, 4 samples of botanical remains, 1 piece sandstone, 29 pieces of organic material (*e.g.,* botanicals and wood), 6 pieces of charcoal, 2 pieces red ochre, and 6 samples of charcoal and soil.

Eight lines of evidence support a cultural affiliation finding for the Burnt Village Site including geographical, archeological, anthropological, linguistic, folklore, oral tradition, historical, and expert opinion. Geographically, the Burnt Village site is the location of the historically known Creek Town of Okfuskeneena. The site is located within established Creek Indian territory on the western bank of the central Chattahoochee River in Troup County, Georgia. This area is both within treaty designated Creek lands, and land known through historic and ethnographic accounts as being home to the Creek Indians. Archeological investigations of the site confirmed historical accounts of the village location, which was recorded as being attacked on September 27, 1793, by white settlers. Evidence includes diagnostic artifacts that correspond to those expected and described in historical accounts. Anthropological examination of the physical human remains also reflects expected physical characteristics, trauma, and injuries as described in the historical accounts. Linguistic and folkloric evidence for settlements in the area reflect a Creek occupation of the central Chattahoochee River Valley, including the area of the Burnt Village site.

Historic accounts indicate that the survivors of Creek Town of Okfuskeneena fled and were welcomed into neighboring Creek polities, which eventually became part of the Creek Confederations. Oral tradition provided by tribal members further clarify that the descendents of the Town of Okfuskeneena currently reside within, and are part of, The Muscogee (Creek) Nation.

Determinations Made by the Mobile District

Officials of the Mobile District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 21 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 5,281 associated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Muscogee (Creek) Nation.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and funerary objects should submit a written request with information in support of the request to Mr. Michael Fedoroff, U.S. Army Corps of Engineers, Mobile District, 109 St. Joseph Street, P.O. Box 2288, Mobile, Alabama 36628–0001, telephone (251) 694–4114, email *Michael.P.Fedoroff@usace.army.mil,* by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Muscogee (Creek) Nation may proceed.

The Mobile District is responsible for notifying The Consulted Tribes that this notice has published.

Dated: March 3, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07765 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20581; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE., and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Omaha District at the address in this notice by May 5, 2016.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Omaha District. The human remains and associated funerary objects were removed from four sites in South Dakota—site 39SL45 (Ft. Sully II) in Sully County; site 39ST15 in Stanley County; site 39WW89, Walworth County; and an unidentified site in Potter County.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by State Archaeological Research Center and Omaha District professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

In 1971 or 1972, human remains representing, at minimum, one individual were removed from site 39SL45, Fort Sully II in Sully County, SD. They are presently located at the South Dakota State Archaeological Research Center (SARC) and are under the control of the Omaha District.

A human cranium and mammal bones were discovered in a storage unit in Hughes County, SD, in September 2001, and turned over to the County Sheriff's office. The human remains were determined to be of archeological origin and transported to SARC. It was established that the human remains were removed by a private citizen while diving in the Missouri River near Old Fort Sully (39SL45) in 1971 or 1972. Fort Sully II was an active U.S. Army post between 1866 and 1894, and just south of the post were two multicomponent village sites, Fort Sully Village (36SL4) and the Glasshoff site (39SL42). It is possible the skull originated from one of the two village sites. Based on morphological characteristics consistent with a Plain Village population, the human remains are determined to be Native American. No known individual was identified. The 6 associated funerary objects are mammal bone fragments.

Site 39SL4 was occupied during the Extended (A.D. 1500–1675) and Post Contact (A.D. 1675–1780) Coalescent variants of the Plans Village tradition. Site 39SL42 was occupied during the Extended Middle Missouri variant (A.D. 1000–1500). Archeological, physical anthropological, geographical, and ethnographic evidence indicates that the Extended Coalescent and Post Contact Traditions are ancestral Arikara. Archeological, geographical, and physical anthropological evidence suggests that the Extended Middle Missouri variant is ancestral to the Mandan. Both the Arikara and Mandan are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation.

In 1984 and 1985, human remains representing, at minimum, three individuals were removed from site 39ST15, Indian Creek Village in Stanley County, SD. They are presently located at the SARC and are under the control of the Omaha District.

During excavation, three isolated teeth, representing three individuals, were removed from the Indian Creek Village Site, 39ST15, but were not identified as human at that time. The collections from the site were at the Archeology Laboratory, Augustana College, Sioux Falls, until 1995, when they were transferred to SARC. In 1997, the teeth were identified as human. Associated records indicate that teeth were found in features within two separate houses at the site. Based on the archeological context, the human remains are determined to be Native American. No known individuals were identified. No associated funerary objects are present.

Three variants of the Plains Village Tradition are represented at the multicomponent earth lodge village site 39ST15—Extended Middle Missouri (A.D. 1000–1500), Extended (A.D. 1500–1675), and Post Contact Coalescent (A.D. 1675–1780). Individual 1 is mostly likely associated with the Extended Middle Missouri component, and Individuals 2 and 3 are most likely associated with the Post Contact Coalescent component. Archeological, physical anthropological, historical, ethnographic, and geographical evidence support that Middle Missouri as being ancestral to the Mandan, and the Post Contact Coalescent as being ancestral to the Arikara. Both the Arikara and Mandan are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation.

In 1979 and 1982, human remains representing, at minimum, three individuals were removed from site 39WW89 in Walworth County, SD. They are presently located at the SARC and are under the control of the Omaha District.

The human remains were removed during two separate investigations. In 1979, the University of Nebraska, Lincoln, surveyed the east shore of Lake Oahe and removed human bone fragments representing two individuals, along with a single lithic flake from the surface. In 1982, Augustana College, Sioux Falls, conducted test excavations at the site and removed the human remains of three individuals and two associated funerary objects; human remains from two of the individuals removed in 1982 were determined to be portions of the individuals removed in 1979. The collection was transferred to SARC in 1984, and the human remains were inventoried by the University of Tennessee, Knoxville, and then reburied in 1991, near Ft. Pierre, SD. In 1999, the human remains from the Augustana College investigation and all the associated funerary objects were located by SARC in their collections. Based on the archeological context and associated funerary objects, the human remains are determined to be Native American. No known individuals were identified. The 3 associated funerary objects are 1 lithic tool and 2 lithic flakes.

Based on radiometric dating, the site was used between A.D. 1400–1560, a time period that includes two archeologically defined components, the Extended Middle Missouri (A.D. 1000–1500) and the Extended Coalescent (A.D. 1500–1675) variants of the Plan Village Tradition. Based on architecture, artifact types, geographical location, and physical anthropological data, the Extended Middle Missouri populations are ancestral Mandan and the Extended Coalescent are ancestral Arikara. Both the Mandan and the Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation.

In 1963, human remains representing, at minimum, 1 individual were removed from an unidentified site in Potter County, SD. They are presently located at the SARC and are under the control of the Omaha District.

In April 1999, a human skull was donated to the Nebraska State Historical Society, Lincoln. The skull was reported to be removed along the Missouri River near Gettysburg, SD. After transfer to SARC in 1999, and review of the documentation and topographic maps, the human remains were determined to have originated from Omaha District property. Based on morphological characteristics the skull is determined to be Native American. No known individual was identified. No associated funerary objects are present.

The morphological characteristics of the cranium are indicative of Arikara ancestry. Additionally, the Arikara generally practiced primary inhumation and the crania exhibits evidence of such a burial method (soil adherence and root etchings, along with lack of weathering). Ethnographic and historic records indicate Arikara villages were located in Potts County during the Extended (A.D. 1500–1675) and Post Contact Coalescent (A.D. 1675–1780). Based on the archeological, physical anthropological, and geographic evidence, the skull is affiliated with the Arikara. The Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation.

Determinations Made by the Omaha District

Officials of the Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the nine objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The Omaha District is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: March 10, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07771 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20583; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Omaha District, Omaha, NE., and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Omaha District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Omaha District at the address in this notice by May 5, 2016.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Omaha District. The human remains and associated funerary objects were removed from four sites in South Dakota—site 39CO19 in Corson County; 39CA117 (Stranded Squirrel) in Campbell County; site 39CA208 (Helb) in Campbell County; and site 39CA4 (Anton Rygh) in Campbell County.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by State Archaeological Research Center and Omaha District professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from site 39CO19 in Corson County, SD. They are presently located at the South Dakota State Archaeological Research Center (SARC) and are under the control of the Omaha District. Human remains of five co-mingled individuals and one associated funerary object were located by SARC between 1987 and 1988, but it is not clear if the human remains were removed in that time frame or if they were from a previously made collection that had been sent to SARC in the mid-1980s. SARC transferred the human remains to the University of Tennessee, Knoxville, where an inventory was completed. After return to SARC, the human remains were reburied at site 39ST15. A portion of Individual 5 was among the human remains reburied, but the pelvis was retained at the University of Tennessee on loan until 1995, when it was returned to SARC.

The current collection at SARC consists of the pelvis from Individual 5, a female over 45 years of age. No known individuals were identified. The one associated funerary object is a single fragment of mammal cranium, which was found stored with the human remains.

The original co-mingling of the five incomplete individuals suggests a secondary burial, possibly an ossuary. Based on burial type, archeological context, and physical anthropological review, the individuals from the site are Native American. Potts Village, site 39CO19, is an earth lodge village consisting of 35–50 house depressions, some of which are enclosed by a fortification ditch. Based on house types and artifacts, particularly the presence of LaRoche Ware ceramics, the village has been dated to the Extended Coalescent Tradition (A.D. 1500–1675). Both archeological and physical anthropological evidence indicates that the Extended Coalescent Tradition is ancestral Arikara. The Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation.

In 1979, human remains representing, at minimum, two individuals and 14 associated funerary objects that were removed from site 39CA117 in Campbell County, SD. They are presently located at the SARC and are under the control of the Omaha District. The site was located in June 1979, during a survey of the east shore of Lake Oahe. Robert E. Pepperl, University of Nebraska, Department of Anthropology, mapped and tested the site in July 1979. Two individuals and 14 funerary objects were recovered from a burial pit slumping from the cutbank onto the lakeshore. The human remains, originally held at the University of Nebraska, were transferred to SARC in 1986, and then submitted to the University of Tennessee, Knoxville, for inventory. These individuals were returned to SARC in 1987 and the majority of the human remains were reburied at site 39ST15.

During a review of the collection in 2001, additional human remains from both individuals were found with the funerary objects at SARC. The human remains represent two adult males. Based on burial type and associated artifacts, archeological context, and original physical anthropological review, the individuals from the site are Native American. No known individuals were identified. The 14 associated funerary objects are 1 lot of charcoal fragments, 4 freshwater gastropod shells, and 9 ceramic body sherds.

The Stranded Squirrel site, 39CA117, is a multicomponent occupation on the left bank of the Missouri River. The ceramic funerary objects associated with the burials indicate that the burials were associated with the later site occupation, the Extended Coalescent Variant (A.D. 1500–1675) of the Plains Village Tradition. The geographical location, physical characteristics of the human remains, and ceramics materials support an affiliation of the Extended

Coalescent Variant with the Arikara. The Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation.

On September 30, 1975, human remains representing, at minimum, one individual were removed from the Helb Site, 39CA208 in Campbell County, SD. They are presently located at the SARC and are under the control of the Omaha District. The human remains were removed by archeologists from the Illinois State Museum, under contract with the National Park Service Midwest Archeological Center, Lincoln (MWAC). A looter's pit was found in the east bank of the Missouri River, in what was identified as a primary interment pit containing human remains identified as an adult male. A nearly complete postcranial skeleton was recovered. No known individuals were identified. No associated funerary objects are present.

The collections from the site were housed at MWAC until the fall of 1995, when they were transferred to SARC. The human remains were found in the collections in 1996, while documenting the collection transfer.

Based on burial type, archeological context, and physical anthropological review the individual from the site is Native American. The Helb site, 39CA208, is an earth lodge village dated to the Extended (A.D. 1000–1500) and possibly Terminal (A.D. 1500–1675) Middle Missouri Variants of the Plains Village Tradition, based on rectangular house structures, artifact types, and radiocarbon dating. Archeological and physical anthropological evidence suggests that the Extended and Terminal Middle Missouri Variants are ancestral to the Mandan. The Mandan are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation.

On unknown dates, human remains representing, at minimum, 17 individuals were removed from site 39CA4, the Anton Rygh Site, in Campbell County, SD. They are presently located at the SARC and are under the control of the Omaha District. The collections were the results of two different excavations.

The Anton Rygh site was a large fortified village on the east bank of the Missouri River and first reported by W.H. Over Museum in the 1920s. Excavations at the site began in 1932, and over the course of the next 50 years, over 100 individuals have reportedly been removed from the site. The first set of human remains currently held by SARC were removed during the 1957 to 1959 excavations sponsored by the Smithsonian Institution River Basin Surveys (RBS), at which time a minimum of 66 individuals were collected. The RBS collections were housed at various locations, and in 1975, a significant portion of them of them were transferred to SARC.

This first collection at SARC contains human remains of Individuals 1 through 15 from the RBS. The human remains were identified as seven adults, five children, and three infants. Based on burial type, archeological context, site artifacts, and physical anthropological review, the individuals from the site are Native American. No known individuals were identified. No associated funerary objects are present.

The second collection of human remains from 39CA4 at SARC was removed in October 1978 during a pre-survey reconnaissance of the east bank of Lake Oahe by the University of Nebraska, Lincoln, for the Omaha District. A burial was exposed in the bank and human bone, ceramics, flaking debris, and wood fragments were recovered. After documentation at the University of Nebraska, Lincoln, the collection was transferred to SARC in 1985. The material was then inventoried by the University of Tennessee, Knoxville. The human remains were identified as an adult male and a child of indeterminate gender. Based on burial type, associated artifacts, archeological context, and physical anthropological review, the individuals from the site are Native American. No known individuals were identified. The 26 funerary objects include 1 primary flake, 24 ceramic body sherds stained with red ochre, and 1 lot of cottonwood bark fragments and cedar.

The Anton Rygh site is a Plains Village Tradition multi-component earth lodge village. House structures, burials, cache pits, fortification features, and artifact types suggest at least two levels of occupation. The levels represent an extended Middle Missouri (A.D. 1000–1500) variant while the upper levels represent Extended (A.D. 1500–1675) and Post Contact (A.D. 1675–1780) Coalescent variants. The specific intrasite proveniences of each individual burial at SARC are not well established and the temporal differentiation of the burials is not apparent. Archeological, anthropological, and physical anthropological evidence indicate the Extended Middle Missouri are ancestral Mandan, and the Extended Coalescent and Post Contact Coalescent are ancestral Arikara. Both the Mandan and Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations Made by the Omaha District

Officials of the Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 21 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 41 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The Omaha District is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07769 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20579]; [PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, National Park Service, Natchez Trace Parkway has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on October 16, 2015. This notice corrects the description of funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Natchez Trace Parkway. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Natchez Trace Parkway at the address in this notice by May 5, 2016.

ADDRESSES: Mary Risser, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38804–9715, telephone (662) 680–4005, email *mary_risser@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS. The human remains and associated funerary objects were removed from Lee, Prentiss, and Tishomingo Counties, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Natchez Trace Parkway.

This notice corrects the description of funerary objects published in a Notice of Inventory Completion in the **Federal Register** (80 FR 62566–62567, October 16, 2015). Re-evaluation of materials in preparation for repatriation revealed that some objects had not been appropriately described. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (80 FR 62566–62567, October 16, 2015), column 3, paragraph 3, sentence 4, under the heading "History and Description of Remains" is corrected by substituting the following sentence:

> The 22 associated funerary objects are 1 biface, 1 piece of shatter, 1 concretion, 3 Baldwin Plain vessel fragments, 1 untyped vessel fragment, and 15 fossil fragments.

In the **Federal Register** (80 FR 62566–62567, October 16, 2015), column 3, paragraph 4, sentence 4, under the heading "History and Description of Remains," is corrected by substituting the following sentence:

> The 39 associated funerary objects are 7 Saltillo Fabric Marked vessel fragments, 2 Baldwin Plain vessel fragments, 5 untyped vessel fragments, 7 projectile points, 1 Lowe Cluster projectile point, 3 bifaces, 4 flakes, 1 platform pipe, 1 busycon shell, 1 chert knife, 1 piece of shatter, 1 unmodified stone, 2 flake tools, 2 Baldwin Plain bowls, and 1 Furrs Cord Marked jar.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mary Risser, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38804–9715, telephone (662) 680–4005, email *mary_risser@nps.gov,* by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Chickasaw Nation may proceed.

Natchez Trace Parkway is responsible for notifying the Alabama-Coushatta Tribe of Texas, The Chickasaw Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: March 10, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07772 Filed 4–4–16; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20589]; [PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Catalina Island Museum, Avalon, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Catalina Island Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Catalina Island Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Catalina Island Museum at the address in this notice by May 5, 2016.

ADDRESSES: Michael DeMarsche, Ph.D., Catalina Island Museum, 1 Casino Way, Casino Building, P.O. Box 366, Avalon, CA 90704, telephone (310) 510–2416, email *director@catalinamuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Catalina Island Museum, Avalon, CA. The human remains and associated funerary objects were removed from Los Angeles County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Catalina Island Museum professional staff in consultation with representatives of San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation); Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; and the following nonfederally recognized Indian groups: Gabrielino/Tongva Indians of California Tribe; Gabrieleno/Tongva Tribal Council; San Gabriel Band of Mission Indians; and the Traditional Council of Pimu.

History and Description of the Remains

From 1953–1955, human remains representing, at minimum, two individuals were removed from the Little Harbor Site (CA–SCAI–17) in Los Angeles County, California. Dr. Clement Meighan, of Department of Anthropology at University of California, Los Angeles (UCLA), and students conducted excavations at various times from 1953 to 1955, as part of a research project. The collection was returned to the Catalina Island Museum as part of the fulfillment of their excavation permit in 1996. Radiocarbon dating is from the Early Period (5580 B.C.), and was occupied until Spanish contact based on the presence of glass trade beads. The date of these human remains is assumed to be fairly late considering its proximity to the surface. The human remains are represented by one adult individual of indeterminate sex and one individual represented by a human phalanx with age and sex indeterminable. No known individuals were identified. No associated funerary objects were present.

In 1977, human remains representing, at minimum, 22 individuals were removed from Ripper's Cove (SCAI–26) in Los Angeles County, CA. Fred Reinman and Hal Eberhart of the California State University, Los Angeles, Department of Anthropology excavated the site as a field school. The collection was returned to the Catalina Island Museum as part of the fulfillment of their excavation permit in 1996. Radiocarbon dates the site from A.D. 1340 to 1730. The collection included four identified burials from Ripper's Cove along with fragmentary human remains from midden contexts. The human remains were determined to be 17 adults, a sub-adult, two juveniles, and an infant, all of indeterminate sex, and one individual that could not identified to age or sex. No known individuals were identified. The 176 associated funerary objects include 1 projectile point, 125 shell beads, 1 bag of shell beads, 2 fishhook fragments, 2 fragments and 2 bags of shell, 2 fish gorges, 8 red ochre fragments, 6 stone flakes, 6 ground stone fragments, 7 pieces and 2 bags of unmodified animal bone, 3 bags of charcoal, 8 pieces and 1 bag of stone fragments.

At an unknown date, human remains representing, at minimum, five individuals were removed from the former location of the Busy Bee Restaurant, Avalon, in Los Angeles County, CA. The location within the village site designated as SCAI–29. The human remains were found during renovations at the restaurant and donated to the Catalina Island Museum in 1983 (accessioned as 83.031). There is no date associated with the human remains. Osteological analysis identified the human remains to be Native American. The five individuals were identified as perinatal, two children, one juvenile, and one adult in age. Sex could not be determined. No known individuals were identified. No associated funerary objects are present.

In February 1973, human remains representing, at minimum, four individuals were removed from Torqua Cave (SCAI–32) in Los Angeles County, CA. This collection was excavated by Nelson Leonard, III of University of California, Riverside, and his undergraduate students as a research project. The collection was returned to the Catalina Island Museum as part of the fulfillment of their excavation permit in 1996. No dates have been determined for the site. One burial was distinguished during excavation. Additional human remains were identified from faunal bone. A minimum of four individuals are included in the collection, two of which are adults and one sub-adult. Sex of these human remains could not be determined. The fourth set of human remains was not distinguishable to age or sex. No known individuals were identified. The one associated funerary object is one bag of soil taken from the burial matrix.

At an unknown date, human remains representing, at minimum, six individuals were removed from Empire Landing (CA–SCAI–26) in Los Angeles County, CA. The site was excavated by Vivian Scott, who donated the collection to the Catalina Island Museum in 1968 (accessioned as 68.015). Site SCAI–26 dates from at least the Late Period (A.D. 700–1769) through Spanish contact based on artifact types. The human remains were identified as five adults, three of them female, and one juvenile. No known individuals were identified. The two associated funerary objects are one fish bone and one shell fragment.

In February 1968, human remains representing, at minimum, one individual were removed from Empire Landing in Los Angeles County, CA. These human remains were excavated by P. Williams of the Catalina Laboratory for Archaeology (CLFA) from the Empire Landing area along a cliff edge where there is a midden. There was a stone slab above the burial, but there is no record of the slab being collected. The collection was turned over to the Catalina Island Museum after analysis. SCAI–26 is close by and dates from at least the Late Period (A.D. 700–1769) through Spanish contact based on artifact types. Fragmentary human remains of a Native American adult female were identified. No known individuals were identified. No associated funerary objects are present.

In April 1970 and 1972, human remains representing, at minimum 15 individuals were removed from White's Landing (SCAI–34) in Los Angeles County, CA. The first excavation was led by UCLA undergraduate Dean Decker, in April 1970, as part of the University of California Archaeological Survey. Their goal was to assess settlement patterns on the island using White's Landing West as one chosen site for comparison and analysis. Students from UCLA and the Catalina Island School for Boys assisted in the fieldwork for this project. Catalina Island School (CIS) returned to White's Landing West with Mayfield School in 1972, and continued to excavate the principal village at this cove. The project was likely led by CIS staff archeologist Richard "Duke" Snyder. However, the documentation associated with this separate project is scant at best. The UCLA archeological excavations were sent to the Catalina Island Museum as part of the permit stipulation in 1983. The CIS material was curated with the Catalina Island Museum upon completion of the fieldwork. SCAI–34 dates from at least the Late Period (A.D. 700–1769) through Spanish contact based on artifact types. While only two formal burials were designated in the catalog, fragmentary human remains were pulled from midden contexts as well. The 15 individuals have been identified as 9 adults, 2 juveniles, 2 subadults, and one infant. One individual was to fragmentary to determine age or sex. Two of the adults were further defined as male. No known individuals were identified. The 60 associated funerary objects are 22 shell fishhook blanks, 2 projectile points, 1 steatite bowl, 1 net weight, 1 bag of charcoal fragments, 18 pieces and 2 bags of unmodified animal bone, 1 worked bone fragment, 3 pieces of worked shell, 2 unmodified wavy top shells, 1 stone fragment, 5 chipped stone and tools, and 1 stone core fragment.

At an unknown date, human remains representing, at minimum, 10 individuals were removed from Two Harbors (CA–SCAI–39) in Los Angeles County, CA. The site was excavated by Preston Taylor, who ran the concessions at Two Harbors during the time. He donated the collection of human remains to the Catalina Island Museum in 1961, and it was accessioned as 61.501. SCAI–39 dates from at least the Late Period (A.D. 700–1769) through Spanish contact based on artifact types. There were a nine adults and one juvenile identified. Further analysis identified four of them as female. No known individuals were identified. No associated funerary objects are present.

In August 1963, human remains representing, at minimum, six individuals were removed from Two Harbors (SCAI–39) in Los Angeles County, CA. The human remains were recovered by Dorothy Cowper, from construction activities associated with a fuel line. As a docent at the Southwest Museum, she, along with other visitors and Catalina locals, recovered materials that were being destroyed. Many of the artifacts appear to have left with the amateur excavators as souvenirs as indicated in letters between Cowper and the excavators. Records indicate that the human remains were eventually obtained by UCLA from Ben Hawkins, a zoologist at San Jacinto College, who was on site with Cowper in 1963, and donated to the Catalina Island Museum in 1996. SCAI–39 dates from at least the Late Period (A.D. 700–1769) through Spanish contact based on artifact types. The human remains were identified as four adults, and two sub-adults. Two of the adults were further distinguished as female. No known individuals were identified. No associated funerary objects are present.

In October and November 1969, human remains representing, at minimum, 70 individuals were removed from Two Harbors (CA–SCAI–39) in Los Angeles County, CA. The University of California Archaeological Survey undertook salvage recovery excavations, where the demolition of structures would impact the site. This salvage excavation was accomplished with the help of volunteers from Catalina Island School for Boys, Catalina Island Museum Society, and CEDAM International. The collection was returned to the Catalina Island Museum as part of the fulfillment of their excavation permit in 1996. SCAI–39 dates from at least the Late Period (A.D. 700–1769) through Spanish contact based on diagnostic artifact types. While there were 16 formal burials identified, many fragmentary human remains were encountered in midden contexts. The 70 individuals were identified as 47 adults (12 distinguished as female and 9 as male), 8 sub-adults, 6 juveniles, 5 infants, 1 neonatal, and 2 perinatal. One set of human remains could not be further identified with age or sex. No known individuals were identified. The 226 associated funerary objects include 56 shell and stone beads, 1 fishhook blank, 1 basketry fragment, 1 soapstone plaque, 6 soapstone worked fragments, 5 quartz fragments, 6 stone flakes, 1 core, 1 cobble with asphaltum residue, 2 projectile points, 7 bowl fragments, 1 mano fragment, 4 donut stone fragments, 10 burned seeds, 9 bone awls, 7 charcoal fragments, 101 pieces and 1 bag of unmodified shell, 3 pieces and 2 bags of unmodified animal bone, and 1 bag of stone fragments.

In September 1954, human remains representing, at minimum, two individuals were removed from Parson's Landing (CA–SCAI–102) in Los Angeles County, CA. Dr. Clement Meighan of UCLA, and his students, excavated one test pit and encountered a burial (UCLA Accession 166) as part of a research project. The collection was returned to the Catalina Island Museum as part of the fulfillment of their excavation permit in 1996. No date has been determined for the site or burial, but diagnostic artifacts from the site identify it as prehistoric. The two individuals were identified as an adult male and an adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In April 1971, human remains representing, at minimum, one individual were removed from the West End Site (SCAI–106) in Los Angeles County, CA. Fredric Plog led a UCLA undergraduate field course at the prehistoric site. Analysis continued with the collection at UCLA. The collection was returned to the Catalina Island Museum as part of the fulfillment of their excavation permit in 1996. No dates have been determined for the site. While no formal burials were removed, a single adult human phalanx was identified within the faunal remains. Sex could not be determined. No known individuals were identified. No associated funerary objects are present.

In the summers of 1980 and 1981, human remains representing, at minimum, four individuals were removed from Bullrush Canyon (CA–SCAI–137) in Los Angeles County, CA. The site was excavated by Jane Rosenthal, of California State University, Long Beach, as an undergraduate field school. The site is estimated to A.D. 1600–1700 based on radiocarbon dating. The collection was donated to the Catalina Island Museum in fulfillment of their Catalina Island Conservancy permit upon competition of their analysis. No formal burials or funerary objects were identified. Fragmentary human remains were discovered among faunal remains from the collection. Age and sex of the human remains could not be determined. No known individuals were identified. No associated funerary objects are present.

From 1967 to 1969, human remains representing, at minimum, 17 individuals were removed from Toyon Bay (CA–SCAI–564) in Los Angeles County, CA. Jack Zahniser, of the Catalina Laboratory for Archaeology (CLFA), and his students from the Catalina Island Boy's School, undertook salvage recovery during the construction of a new boathouse and the installation of a septic tank. The collection was turned over to the Catalina Island Museum after analysis was completed. Radiocarbon dating estimates site occupation from A.D. 465 to 1685. The collection contains eleven recorded burials and fragmentary human remains found within midden contexts. The 17 individuals were identified as 12 adults (including 2 males and 2 females), 1 sub-adult, 2 infants, and 1 perinatal. One individual was too fragmentary to determine age or sex. No known individuals were identified. The 97 associated funerary objects are 24 shell and stone beads, 5 donut stones, 35 ground stone tools and fragments, 2 projectile points, 5 effigies, 13 shell and stone pendants and ornaments, 1 pipe fragment, 2 bowl fragments, 2 unmodified shell fragments, 5 chipped stone tools and flakes, 2 worked bone fragments, and 1 fishhook.

At an unknown date, human remains representing, at minimum, two individuals were removed from an archeological site at Little Gibraltar in Los Angeles County, CA. The human remains were found eroding from the area by Catalina Island Company staff and donated to the Catalina Island Museum in 1974 (accessioned as 74.253). There is no date associated with the human remains. One set of human remains was identified as an adult female of Native American ancestry based on metric and non-metric traits. The other human remains were too fragmentary to identify further. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from Renton's Mine streambed in Los Angeles County, CA. The human remains were found eroding from the streambed by Buzzy Vickers, and donated to the Catalina Island Museum in 1977 (accessioned as 77.030). There is no date associated with the human remains, but they were found near a known prehistoric archeological site. Fragmentary human remains of an adult female of Native American origin were identified through osteological analysis. No known individuals were identified. No associated funerary objects are present.

The sites detailed in this notice have been identified by consultation to be within the traditional territories of the Gabrielino (Tongva) with ancestral ties to the Chumash island people. Archeological and ethnohistoric evidence shows that these contact Takic-speaking peoples lived on the southern Channel Islands by at least 5,000 B.C. Island Tongva and Chumash groups have strong ancestral ties through marriage and trade. Analysis of historical records from missions in the Greater Los Angeles area demonstrate kinship ties between these two communities made stronger while in the mission system. The present-day Santa Ynez Band of Chumash Mission Indians traces an earlier shared group identity with the Gabrielino (Tongva) people that inhabited the Channel Islands during the Middle period and through contact.

Associated funerary objects are consistent with those of groups ancestral to the present-day Gabrielino (Tongva) and Chumash people. The material culture of earlier groups living in the geographical areas mentioned above are characterized by archeologists as having passed through stages over the past 5,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations, and do not represent population displacements or movements. The same range of artifact types and materials were used from the pre-contact period until historic times. Native consultants explicitly state that population mixing, which did occur, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity through time can be traced for all sites listed above with present-day Gabrielino (Tongva) and Chumash people. Santa Ynez Band of Chumash Mission Indians tribal members descend from the Channel Islands and specifically represent an ancestral tie to the Gabrielino (Tongva) and Catalina Island by preponderance of the evidence.

Determinations Made by the Catalina Island Museum

Officials of the Catalina Island Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 164 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 563 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Michael DeMarsche, Ph.D., Catalina Island Museum, 1 Casino Way, Casino Building, P.O. Box 366, Avalon, CA 90704, telephone (310) 510–2416, email *director@catalinamuseum.org,* by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to San Manuel Band of Mission Indians, California.

The Catalina Island Museum is responsible for notifying the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation); Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; and the following nonfederally recognized Indian groups: Gabrielino/Tongva Indians of California Tribe; Gabrieleno/Tongva Tribal Council; San Gabriel Band of Mission Indians; and the Traditional Council of Pimu that this notice has been published.

Dated: March 10, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07763 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20590; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Catalina Island Museum, Avalon, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Catalina Island Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Catalina Island Museum. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Catalina Island Museum at the address in this notice by May 5, 2016.

ADDRESSES: Michael DeMarsche, Ph.D., Catalina Island Museum, 1 Casino Way, Casino Building, P.O. Box 366, Avalon, CA 90704, telephone (310) 510–2416, email *director@catalinamuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Catalina Island Museum, Avalon, CA. The human remains were removed from Los Angeles, Santa Barbara Counties, CA and potentially Solano, Placer, and Sacramento Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Catalina Island Museum professional staff in consultation with representatives of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; United Auburn Indian Community of the Auburn Rancheria of California; Wilton Rancheria, California; Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California, and the following nonfederally recognized Indian groups: the Ti'at Society and the Traditional Council of Pimu.

History and Description of the Remains

In October 1960, human remains representing, at minimum, three individuals were removed from Avalon, Los Angeles County, CA. Collection 61.322 consists of a human crania and mandible that were donated by the Santa Catalina Island Co. The human remains were found along with a notecard that stated, "found in patio of Pavilion Lodge, Avalon, Calif. October 11, 1960." There is no information to assume they were excavated from the property. Collection 61.323 consists of an incomplete set of human remains donated by the Santa Catalina Island Co. that also may have been removed from the Pavilion Lodge Hotel in Avalon. There is no information to assume they were excavated from the property. The three adults (2 female and 1 male) were identified as Native American based on osteological metric and non-metric analysis. No known individuals were identified. The one associated funerary object is an abalone shell found with the human remains identified as #61.323.

At an unknown time, human remains representing, at minimum, two individuals were removed from an unknown location, presumably Santa Catalina Island, Los Angeles, CA. This collection of human remains was found within the Catalina Island Museum's human remains collection when it returned from University of California Santa Barbara in 2010. Unfortunately no documentation could be located to further our understanding of the location and date acquired. There were three bags of human remains with only the date, 8.2.93 identified on each bag. No comparison has been found so far. The human remains were identified as two adults of indeterminate sex and were identified as Native American based on osteological metric and non-metric analysis. One individual shows evidence of burning. No known individuals were identified. No associated funerary objects are present.

Possibly in 1907, human remains representing, at minimum, two individuals were removed from the Channel Islands, Los Angeles and Santa Barbara Counties, CA. This collection was donated to the Catalina Island Museum by Loring L. Bigelow in 2009. Loring Bigelow acquired the human remains from his father Lewis Bigelow who had received the human remains as a gift in 1907 from Orrin Weston, brother of Ben Weston (a Catalina Island rancher-sheep grazer). At that time Orrin Weston stated that he picked up the human remains on one of the Channel Islands while touring on their yacht. The human remains were identified as two adults, one male and one female, of Native American ancestry based on osteological metric and non-metric analysis. No known individuals were identified. No associated funerary objects are present.

From 1915 to 1928, human remains representing, at minimum, 194 individuals were removed from San Nicolas Island, Santa Catalina Island, and San Clemente Islands in Los Angeles County, CA, from San Miguel Island in Santa Barbara County, CA, as well as purchased from a number of shell mounds located within the Sacramento Valley including Kings Mound, Johnston's Mound, Auburn Mound, and Vacaville Mound located in Solano, Placer, and Sacramento Counties. The Glidden Collection was purchased by the Catalina Museum Society in 1962, and became the foundation for the Catalina Island Museum's archeological collections. Based on photographs and journals, now held within the Catalina Island Museum's archives, hundreds of burials and thousands of objects were removed by Glidden from Santa Catalina, San Clemente, San Nicolas, and San Miguel Islands between 1919 and 1928. A majority of the collection was amassed under the sponsorship of the Gustav Heye Foundation located in New York. After the patronage with the Heye Foundation ended by 1923, Glidden built his own museum. A portion of the Museum of the American Indian of the Channel Islands opened in Avalon in 1926, with the human remains and cultural materials not sent to the Heye Foundation or to Chicago's Field Museum. Glidden continued to add to his collections through additional excavations on Catalina Island. Glidden also added to his collection by purchasing human remains and other objects from dealers located around the country, with documentation identifying several as coming from a number of mounds from Sacramento Valley. The cultural affiliation of the human remains and cultural items from the Glidden collection has been complicated at best. Although Glidden used a basic sequential numbering system to briefly describe his finds in his excavation journals, these numbers were not transferred to the human remains, objects or photos that he took. As a result, linking the physical human remains and burial objects to its original provenience is impossible. We can only surmise that these items could be affiliated with Tongva or Chumash based on the locations of the island within each tribal territory. However, invoices and letters particularly between Glidden and Smith's Coin and Curio Company located in Sacramento, identifies that Glidden ordered, paid for, and received human remains and artifacts. In his letters to Glidden, proprietor Carl Smith states that the human remains and other items came from a number of shell mounds located within the Sacramento Valley including Kings Mound, Johnston's Mound, Auburn Mound, and Vacaville Mound. There are no marks or data that identify provenience with specific human remains or items within the Glidden Collection. Further complicating the situation, correspondence between Glidden and potential collectors shows that Glidden sold some of his collections. During osteological analysis of the human remains, numerous non-Native American ethnicities have been identified including individuals of European, African, and Asian descent. Human remains of non-native ancestry are not included in this notice. There are a minimum of 194 individuals that can be identified to Native American ancestry based on metric and non-metric analysis, including 176 adults (of which 89 can be distinguished as female and 82 male) and 18 sub-adults, of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

At the time of the excavation and removal of these human remains, the land from which the human remains were removed was not the tribal land of any Indian tribe or Native Hawaiian organization. In 2015, the Catalina Island Museum consulted with all Indian tribes who are recognized as aboriginal to the area from which these Native American human remains were removed. These tribes are Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, United Auburn Indian Community of the Auburn Rancheria, Wilton Rancheria, California, and Yocha Dehe Wintun Nation, California. Since none of the human remains can be individually distinguished as being from a particular community, the Catalina Island Museum agreed to transfer control of the human remains to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Determinations Made by the Catalina Island Museum

Officials of the Catalina Island Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American ancestry based on metric and non-metric osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 201 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains may be to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Michael DeMarsche, Ph.D., Catalina Island Museum, 1 Casino Way, Casino Building, P.O. Box 366, Avalon, CA 90704, telephone (310) 510–2416, email *director@catalinamuseum.org,* by May 5, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed.

The Catalina Island Museum is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California, United Auburn Indian Community of the Auburn Rancheria, Wilton Rancheria, California, and Yocha Dehe Wintun Nation, California that this notice has been published.

Dated: March 10, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–07764 Filed 4–4–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

National Park Service

[RR02013000, XXXR5537F3, RX.19871110.1000000]

Notice of Extension of Public Comment Period for the Draft Environmental Impact Statement for Adoption of a Long-Term Experimental and Management Plan for the Operation of Glen Canyon Dam, Page, Arizona

AGENCY: Bureau of Reclamation and National Park Service, Interior.

ACTION: Notice of extension.

SUMMARY: The Department of the Interior, through the Bureau of Reclamation and the National Park Service, is extending the public comment period for the Draft Environmental Impact Statement (EIS) for Adoption of a Long-Term Experimental and Management Plan (LTEMP) for the Operation of Glen Canyon Dam to Monday, May 9, 2016. The Notice of Availability and Notice of Public Meetings for the Draft Environmental Impact Statement was published in the **Federal Register** on January 8, 2016 (81 FR 963). The public comment period for the Draft EIS was originally scheduled to end on Thursday, April 7, 2016.

DATES: Comments on the Draft EIS will be accepted until close of business on Monday, May 9, 2016.

ADDRESSES: You may submit written comments by the following methods:

- *Web site: http://parkplanning.nps.gov/LTEMPEIS.*
- *Mail:* Glen Canyon Dam LTEMP Draft EIS, Argonne National Laboratory, 9700 South Cass Avenue—EVS/240, Argonne, Illinois 60439.

Comments will not be accepted by facsimile, email, or in any other way than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

FOR FURTHER INFORMATION CONTACT: Ms. Katrina Grantz, Chief, Adaptive Management Group, Bureau of Reclamation, *kgrantz@usbr.gov,* 801–524–3635; or Mr. Rob Billerbeck, National Park Service, *Rob_P_Billerbeck@nps.gov,* 303–987–6789.

SUPPLEMENTARY INFORMATION: In response to several requests for an extension, the Bureau of Reclamation and the National Park Service are extending the close of the public comment period for the Draft EIS to Monday, May 9, 2016.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 30, 2016.

Jennifer Gimbel,

Principal Deputy Assistant Secretary—Water and Science.

Michael Bean,

Principal Deputy Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 2016–07761 Filed 4–4–16; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–533 (Final)]

Polyethylene Terephthalate Resin From Oman; Termination of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: On March 14, 2016, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation concerning polyethylene terephthalate resin from Oman (81 FR 13321). Accordingly, the countervailing duty investigation concerning polyethylene terephthalate resin from Oman (Investigation No. 701–TA–533 (Final)) is terminated.

DATES: *Effective Date:* March 14, 2016.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: March 31, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–07754 Filed 4–4–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities; Proposed eCollection; Ecomments Requested; Immigration Practitioner Complaint Form (OMB1125–0007)

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional days until May 5, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jean King, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension Without Change of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Immigration Practitioner Complaint Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form EOIR–44. The applicable component within the Department of Justice is the Office of General Counsel, Executive Office for Immigration Review.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals who wish to file a complaint against an immigration practitioner authorized to appear before the Board of Immigration Appeals and the immigration courts. Abstract: The information on this form will be used to determine whether the Office of the General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 200 respondents will complete the form annually, with an average of 2 hours per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 400 hours. It is estimated that respondents will take 2 hours to complete the form. The burden hours for collecting respondent data sum to 400 hours (200 respondents × 2 hours = 400 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: March 30, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–07694 Filed 4–4–16; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0002]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Appeal From a Decision of an Immigration Judge

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day Notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 6, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact

Jean King, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Notice of Appeal From a Decision of an Immigration Judge.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–26, Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* A party (either the U.S. Immigration and Customs Enforcement of the Department of Homeland Security or the respondent/applicant) who appeals a decision of an Immigration Judge to the Board of Immigration Appeals (Board). A party affected by a decision of an Immigration Judge may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). An appeal from an Immigration Judge's decision is taken by completing the Form EOIR–26 and submitting it to the Board.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 17,627 respondents will complete the form annually with an average of thirty minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8,813.5 total burden hours associated with this collection annually.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: March 31, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–07731 Filed 4–4–16; 8:45 am]

BILLING CODE 4410–30–P

LEGAL SERVICES CORPORATION

Notice of Proposed Revisions for the LSC Grant Assurances for Calendar Year 2017 Basic Field Grants

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed changes and request for comments.

SUMMARY: The Legal Services Corporation ("LSC") intends to revise the LSC Grant Assurances for calendar year 2017 Basic Field Grants and is soliciting public comment on the proposed changes. The proposed revisions affect Grant Assurances 7, 15, 20, and 22. The proposed LSC Grant Assurances for calendar year 2017 Basic Field Grants, in redline format indicating the proposed changes to the current "LSC 2016 Grant Assurances," are available at *http://grants.lsc.gov/sites/default/files/Grants/ReferenceMaterials/2017-GrantAssurances-Proposed.pdf.*

DATES: All comments and recommendations must be received on or before the close of business on May 5, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Agency Web site: http://www.lsc.gov/contact-us.* Follow the instructions for submitting comments on the Web site.
- *Email: LSCGrantAssurances@lsc.gov.*
- *Fax:* (202) 337–6813.
- *Mail:* Legal Services Corporation, 3333 K Street NW., Washington, DC 20007.

All comments should be addressed to Reginald J. Haley, Office of Program Performance, Legal Services Corporation. Include "2017 LSC Grant Assurances" as the heading or subject line for all comments submitted.

FOR FURTHER INFORMATION CONTACT: Reginald J. Haley, *haleyr@lsc.gov,* (202) 295–1545.

SUPPLEMENTARY INFORMATION: The purpose of the LSC Grant Assurances is to delineate the rights and responsibilities of LSC and the recipient pursuant to the provisions of the grant. As a grant-making agency created by Congress, LSC has Grant Assurances that are intended to reiterate and/or clarify the responsibilities and obligations already applicable through existing law and regulations and/or obligate the recipient to comply with specific additional requirements in order to effectuate the purposes of the Legal Services Corporation Act, as amended, and other applicable law. A summary of the proposed changes follows.

Grant Assurance 7 requires LSC recipients to provide legal services in accordance with: (a) The grant proposal that LSC approved; (b) the LSC Performance Criteria; (c) the ABA Standards for the Provision of Civil Legal Aid; (d) the ABA standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means; and (e) any applicable code or rules of professional conduct, responsibility, or ethics. The proposed change clarifies the Grant Assurance and notifies the recipient that LSC's consent is required before the recipient makes significant changes to the delivery system described in the approved grant proposal or grant renewal application.

Grant Assurance 15 requires grantees to notify LSC of: (a) An office closing or relocation; (b) a change of board chairperson; (c) a change of chief executive officer; (d) a change in recipient's charter, articles of incorporation, by-laws, or governing body structure; and (e) a change in recipient's main email and Web site address. The proposed change updates the instruction for submitting these notifications to LSC.

Grant Assurance 20 requires LSC recipients to provide advance notification to LSC of a proposed merger, consolidation, change in recipient's name, or status as a legal entity. In addition, Grant Assurance 20 directs recipients to LSC's instructions for planning an orderly conclusion of the role and responsibility of an LSC recipient. The proposed change clarifies and adds to the requirements for notifying LSC of a significant change in recipient's status and updates the Web site link to LSC's instructions for planning an orderly conclusion of the role and responsibility of an LSC recipient.

Grant Assurance 22 requires recipients to give recognition and acknowledgement of LSC support and funding by displaying the LSC logo on the recipient's Web site, annual reports, press releases, letterhead, and other similar announcements and documents. The proposed change updates the Web site link to the digital and camera-ready versions of the LSC logo.

Dated: March 31, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–07747 Filed 4–4–16; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (25150).

Date and Time: May 23, 2016—9:00 a.m.–5:00 p.m. May 24, 2016—8:30 a.m.–1:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Stafford II—Room 555, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Amy Friedlander, CISE, Division of Advanced Cyberinfrastructure, National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230; Telephone: 703–292–8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities in the ACI community. To provide advice to the Director/NSF on issues related to long-range planning.

Agenda: Updates on NSF wide ACI activities.

Dated: March 31, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–07706 Filed 4–4–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0058]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of six amendment requests. The amendment requests are for Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Shearon Harris Nuclear Power Plant, Unit 1, H. B. Robinson Steam Electric Plant, Unit No. 2, Indian Point Nuclear Generating, Unit Nos. 2 and 3, River Bend Station, Unit 1, and Prairie Island Nuclear Generating Plant, Units 1 and 2. For each amendment request, the NRC proposes to determine that the amendment request involves no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by May 5, 2016. A request for a hearing must be filed by June 6, 2016. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by April 15, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0058. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Sandra Figueroa, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1262, email: *Sandra.Figueroa@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0058 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0058.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0058, facility name, unit number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by June 6, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by June 6, 2016.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona

Date of amendment request: November 25, 2015, as supplemented by letter dated January 29, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML15336A087 and ML16043A361, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the Technical Specifications (TS) for PVNGS by modifying the requirements to incorporate the results of an updated criticality safety analysis for both new and spent fuel storage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would modify the [PVNGS TS] to incorporate the results of an updated criticality safety analysis for both new fuel and spent fuel storage. The revised criticality safety analysis provides an updated methodology that allows credit for neutron absorbing NETCO–SNAP–IN® rack inserts and corrects non-conservative input assumptions in the previous criticality safety analysis.

The proposed amendment does not change or modify the fuel, fuel handling processes, number of fuel assemblies that may be stored in the spent fuel pool (SFP), decay heat generation rate, or the SFP cooling and cleanup system. The proposed amendment was evaluated for impact on the following previously evaluated events and accidents:

- Fuel handling accident (FHA)
- fuel misload event
- SFP boron dilution event
- seismic event
- loss of SFP cooling event

Implementation of the proposed amendment will be accomplished in accordance with the Spent Fuel Pool Transition Plan and does not involve new fuel handling equipment or processes. The radiological source term of the fuel assemblies is not affected by the proposed amendment request. The FHA radiological dose consequences associated with fuel enrichment at this level are addressed in the PVNGS Updated Final Safety Analysis Report (UFSAR) Section 15.7.4 and remain unchanged. Therefore, the proposed amendments do not significantly increase the probability or consequences of a[n] FHA.

To address the proposed additional arrays, several elements of the current process were reviewed. Pool layout, region eligibility specifications and the development of fuel move sheets are separate tasks. Each of these activities is procedurally controlled and performed by trained and qualified individuals. This segregation of activities separates and insulates the complexity of [SFP] module geometry, fuel region specifications and interface considerations from the development of fuel movement sheets.

Creation of fuel move sheets in accordance with the proposed amendment will not significantly change the probability of a fuel misload event because development of fuel move sheets will continue to be controlled by approved procedures and developed by qualified personnel. A review of the additional proposed arrays and the transitional period (when both the current and new arrays would be effective in the [SFP]) was performed. The human performance shaping factors evaluated did not identify significant potential impacts due to the process changes themselves or the additional arrays. The review, therefore, confirmed that the potential for human performance errors resulting in the probability of a misload event is not significantly increased.

Operation in accordance with the proposed amendment will not significantly change the probability of a fuel misload event because fuel movement activities will continue to be controlled by approved fuel handling procedures and performed by qualified personnel. Although there will be additional allowable storage arrays defined by the amendment, the fuel handling procedures will continue to require identification of the initial and target locations for each fuel assembly that is moved.

The consequences of a fuel misload event are not changed because the reactivity analysis demonstrates that the same subcriticality criteria and requirements continue to be met for the limiting fuel misload event.

Operation in accordance with the proposed amendment will not change the probability or consequences of a boron dilution event because the systems and events that could affect SFP soluble boron concentration are unchanged. The current boron dilution analysis demonstrates that the limiting boron dilution event will reduce the boron concentration from the TS limit of 2150 [parts per million (ppm)] to 1900 ppm. This leaves sufficient margin to the 1460 ppm credited by the SFP criticality safety analysis. The analysis confirms that the time needed for dilution to reduce the soluble boron concentration is greater than the time needed for actions to be taken to prevent further dilution.

Operation in accordance with the proposed amendment will not change the probability of a seismic event since there are no elements of the updated criticality analysis that influence the occurrence of a seismic event. The consequences of a seismic event are not significantly increased because the forcing functions for seismic excitation are not increased and because the mass of storage racks with NETCO–SNAP–IN® inserts is not appreciably increased. Seismic analyses demonstrate adequate stress levels in the storage racks when inserts are installed.

Operation in accordance with the proposed amendment will not change the probability of a loss of SFP cooling event because the systems and events that could affect SFP cooling are unchanged. The consequences are not significantly increased because there are no changes in the SFP heat load or SFP cooling systems, structures, or components. Furthermore, conservative analyses indicate that the current design requirements and criteria continue to be met with the NETCO–SNAP–IN® inserts installed.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would modify the PVNGS TS to incorporate the results of an updated criticality safety analysis for both new fuel and spent fuel storage. The revised criticality safety analysis provides an updated methodology that allows credit for neutron absorbing NETCO–SNAP–IN® rack inserts and corrects non-conservative input assumptions in the previous criticality safety analysis.

The proposed amendment does not change or modify the fuel, fuel handling processes, number of fuel assemblies that may be stored in the pool, decay heat generation rate, or the SFP cooling and cleanup system. The effects of operating with the proposed amendment are listed below. The proposed amendment was evaluated for the potential of each effect to create the possibility of a new or different kind of accident:

- Addition of inserts to the SFP storage racks,
- new storage patterns,
- additional weight from the inserts, and
- displacement of SFP water by the inserts.

Each NETCO–SNAP–IN® insert will be placed between a fuel assembly and the storage cell wall, taking up some of the space available on two sides of the fuel assembly. Analyses demonstrate that the presence of the inserts does not adversely affect spent fuel cooling, seismic capability, or subcriticality. The aluminum and boron carbide materials of construction have been shown to be compatible with nuclear fuel, storage racks, and SFP environments, and generate no adverse material interactions. Therefore, placing the inserts into the SFP storage racks cannot cause a new or different kind of accident.

Operation with the added weight of the NETCO–SNAP–IN® inserts will not create a new or different accident. The analyses of the racks with NETCO–SNAP–IN® inserts installed demonstrate that the stress levels in the rack modules continue to be considerably less than allowable stress limits. Therefore, the added weight from the inserts cannot cause a new or different kind of accident.

Operation with the proposed fuel storage patterns will not create a new or different kind of accident because fuel movement will continue to be controlled by approved fuel handling procedures. These procedures continue to require identification of the initial and target locations for each fuel assembly that is moved. There are no changes in the criteria or design requirements pertaining to fuel storage safety, including subcriticality requirements. Analyses demonstrate that the proposed storage patterns meet these requirements and criteria with adequate margins. Therefore, the proposed storage patterns cannot cause a new or different kind of accident.

The scenario involving the inadvertent removal of a SNAP–IN® insert was evaluated and found to not represent a "new or different kind of accident." Rather, it represents a loss of reactivity configuration control, which is a less significant form of a fuel assembly misload event. Whenever a fuel assembly is placed in a storage configuration that is not explicitly allowed, a fuel assembly misload condition is created, whether it is the removal of a SNAP–IN® insert or the placement of a fuel assembly in a location that is missing a specified SNAP–IN® insert. An inadvertent removal of a SNAP–IN® insert is, therefore, not a new kind of accident but rather an alternate way of creating a previously evaluated accident. Loading a fuel assembly into a storage cell location required to be vacant and blocked (the limiting accident of this type) bounds the removal of a SNAP–IN® insert.

Operation with insert movement above stored fuel will not create a new or different kind of accident. The insert with its handling tool weighs less than the weight of a single fuel assembly. Single fuel assemblies are routinely moved safely over fuel assemblies and the same level of safety in design and operation will be maintained when moving the inserts.

The installed rack inserts will displace a negligible quantity of the SFP water volume and therefore, will not reduce operator response time to previously-evaluated SFP accidents.

The accidents and events previously analyzed remain bounding. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment would modify the TS to incorporate the results of an updated criticality safety analysis for both new fuel and spent fuel storage. The revised criticality safety analysis provides an updated methodology that allows credit for neutron absorbing NETCO–SNAP–IN® rack inserts and corrects non-conservative input assumptions in the previous criticality safety analysis. It was evaluated for its effect on current margins of safety as they relate to criticality, structural integrity, and spent fuel heat removal capability. The margin of safety for subcriticality required by 10 CFR 50.68(b)(4) is unchanged. New criticality analyses confirm that operation in accordance with the proposed amendment continues to meet the required subcriticality margins.

The structural evaluations for the racks and [SFP] with NETCO–SNAP–IN® inserts installed show that the rack and SFP are unimpaired by loading combinations during seismic motion, and there is no adverse seismic-induced interaction between the rack and NETCO–SNAP–IN® inserts.

The proposed amendment does not affect spent fuel heat generation, heat removal from the fuel assembly, or the SFP cooling systems. The effects of the NETCO–SNAP–IN® inserts are negligible with regards to volume of water in the pool, flow in the SFP rack cells, and heat removal system performance.

The addition of a Spent Fuel Pool Rack Neutron Absorber Monitoring program (proposed TS 5.5.21) provides a method to identify potential degradation in the neutron absorber material prior to challenging the assumptions of the criticality safety analysis related to the material. Therefore, the addition of this monitoring program does not reduce the margin of safety; rather it ensures the margin of safety is maintained for the planned life of the spent fuel storage racks.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment request involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Progress, Inc., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1 (HNP), Wake and Chatham Counties, North Carolina; Duke Energy Progress, Inc., Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (RNP), Darlington County, South Carolina

Date of amendment request: November 19, 2015. A publicly-available version is in ADAMS under Accession No. ML15323A351.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment requested plant-specific review and approval of a reactor core design methodology report DPC–NE–3008–P, Revision 0, "Thermal-Hydraulic Models for Transient Analysis," for adoption into the HNP and RNP Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> 1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> Response: No.
>
> The proposed change requests review and approval of DPC–NE–3008–P, Revision 0, "Thermal-Hydraulic Models for Transient Analysis," to be applied to Shearon Harris Nuclear Power Plant (HNP) and H. B. Robinson Steam Electric Plant (RNP). The benchmark calculations performed confirm the accuracy of the codes and models. The proposed use of this methodology does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. There is no impact on the source term or pathways assumed in accidents previously assumed. No analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident.
>
> Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> 2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?
>
> Response: No.
>
> The proposed change requests review and approval of DPC–NE–3008–P, Revision 0, "Thermal-Hydraulic Models for Transient Analysis," to be applied to Shearon Harris Nuclear Power Plant (HNP) and H. B. Robinson Steam Electric Plat (RNP). It does not change any system functions or maintenance activities. The change does not physically alter the plant, that is, no new or different type of equipment will be installed. The software is not installed in any plant equipment, and therefore the software is incapable of initiating an equipment malfunction that would result in a new or different type of accident from any previously evaluated. The change does not alter assumptions made in the safety analyses but ensures that the core will operate within safe limits. This change does not create new failure modes or mechanisms which are not identifiable during testing, and no new accident precursors are generated.
>
> Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> 3. Does the proposed change involve a significant reduction in a margin of safety?
>
> Response: No.
>
> Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed change requests review and approval of DPC–NE–3008–P, Revision 0, "Thermal-Hydraulic Models for Transient Analysis," to be applied to Shearon Harris Nuclear Power Plant (HNP) and H. B. Robinson Steam Electric Plant (RNP). DPC–NE–3008–P will be used in thermal-hydraulic transient analyses as a portion of the overall Duke Energy methodology for cycle reload safety analyses. As with the existing methodology, the Duke Energy methodology will continue to ensure (a) the acceptability of analytical limits under normal, transient, and accident conditions, and (b) that all applicable design and safety limits are satisfied such that the fission product barriers will continue to perform their design functions.
>
> Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tyron Street, Mail Code DEC45A, Charlotte, North Carolina 28202.

NRC Branch Chief: Benjamin G. Beasley.

Duke Energy Progress, Inc., Docket No. 50–400, Shearon Harris Nuclear Power Plant (HNP), Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: December 17, 2015. A publicly-available version is in ADAMS under Accession No. ML15362A169.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the as-found lift setting tolerance for main steam line code safety valves (MSSVs), revise the nominal reactor trip setpoint on pressurizer water level, and revise pressurizer water level span in the Technical Specifications (TS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> 1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> Response: No.
>
> The proposed TS changes allow for an increase in the as-found MSSV setpoint tolerance from ±1% to ±3%. In addition, the proposed amendment request includes a conservative change to the reactor trip on high pressurizer level and makes TS 3.4.3 consistent with the initial pressurizer level used in the re-analysis of the HNP Final Safety Analysis Report (FSAR), Section 15.2.3 turbine trip overpressure event. The proposed changes do not alter the MSSV nominal lift setpoints. The proposed TS changes have been evaluated on a plant specific basis. The required plant specific analyses and evaluations included transient analysis of the turbine trip event (FSAR, Section 15.2.3), evaluation of the changes on the peak clad temperature from the [Small Break] Loss of Coolant Accident (LOCA) event, and disposition of the changes on all other FSAR events. The revised analysis evaluations were based on the existing design pressure of the reactor coolant system (RCS) and the main steam (MS) system.
>
> These analyses and evaluations demonstrate that there is adequate margin to the specified acceptable fuel design limits (SAFDL) and the design pressures of the RCS and the MS system. The evaluations also demonstrate that the change will result in acceptable peak clad temperature (PCT) results for LOCA analyses. The change has no impact on the design pressure for the containment as peak containment pressure and temperature are obtained from postulated pipe breaks in the containment that do not challenge the MSSV lift setpoints. The MSSVs vent directly to open, ambient conditions and do not directly contribute to the temperature or pressure profile for any structure, system, or component.
>
> There is a change in the flow rate credited for the auxiliary feedwater system (AFW) based on the higher MSSV opening tolerance. This change has been evaluated for each of the FSAR Chapter 15 events. The impact of the decrease in AFW flow is included in the PCT change for SB [small break] LOCA. The AFW flow effects for all other events have been determined to be acceptable.
>
> As a result, the probability of a malfunction of the RCS and the main steam system are not increased and the consequences of such an accident remain acceptable. Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.
>
> 2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?
>
> Response: No.
>
> The proposed TS changes allow for an increase in the as-found MSSV setpoint tolerance from ±1% to ±3%. In addition, the proposed amendment request includes a conservative change to the reactor trip on high pressurizer level and makes TS 3.4.3 consistent with the initial pressurizer level used in the re-analysis of the FSAR, Section 15.2.3 turbine trip overpressure event.

Plant specific analyses and evaluations indicate that the plant response to any previously evaluated event will remain acceptable. All plant systems, structures, and components will continue to be capable of performing their required safety function as required by event analysis guidance.

The proposed TS changes do not alter the MSSV nominal lift setpoints. The operation and response of the affected equipment important to safety has been evaluated and found to be acceptable. All structures and components will continue to be operated within acceptable operating and/or design parameters. No system, structure, or component will be subjected to a condition that has not been evaluated and determined to be acceptable using the guidance required for specific event analysis.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes allow for an increase in the as-found MSSV setpoint tolerance from ±1% to ±3%. In addition, the proposed amendment request includes a conservative change to the reactor trip setpoint on high pressurizer level and makes TS 3.4.3 consistent with the initial pressurizer level used in the re-analysis of the FSAR Section, 15.2.3 turbine trip overpressure event.

The proposed TS changes do not alter the MSSV nominal lift setpoints. The operation and response of the affected equipment important to safety is unchanged. All systems, structures, and components will continue to be operated within acceptable operating and/or design parameters. The calculated peak reactor vessel pressure and main steam system pressure for the turbine trip overpressure event remains within the acceptance criteria. A new analysis is submitted to support the change. The model used for the re-analyzed turbine trip event (FSAR, Section 15.2.3) is based on methodologies previously approved by the NRC for other licensees.

The consequences of the turbine trip event continue to be within the regulatory limit for the event, thus the margin of safety for overpressure remains unchanged. The impact on LOCA has been evaluated and the PCT change results in a PCT that is lower than the regulatory limit. Therefore, the margin to safety for cladding performance in this event is not reduced.

The margin of safety for the containment is unaffected by the proposed change. Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon St., M/C DEC45A, Charlotte, North Carolina 28202.

NRC Branch Chief: Benjamin G. Beasley.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating, Unit Nos. 2 and 3, Westchester County, New York

Date of amendment request: December 10, 2015. A publicly available version is in ADAMS under Accession No. ML15350A006.

Description of amendment request: These amendment requests contain sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the near end-of-life moderator temperature coefficient (MTC) surveillance requirement and technical specification (TS) for Indian Point Nuclear Generating, Unit Nos. 2 and 3, by placing a set of conditions on reactor core operation, which if met, would allow revision from the required MTC measurement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The safety analysis assumption of a constant moderator density coefficient and the actual value assumed are not changing. The Bases for and values of the most negative MTC Limiting Condition for Operation and for the Surveillance Requirement are not changing. Instead, a revised prediction is compared to the MTC Surveillance limit to determine if the limit is met.

The proposed changes to the TS do not affect the initiators of any analyzed accident. In addition, operation in accordance with the proposed TS changes ensures that the previously evaluated accidents will continue to be mitigated as analyzed. The proposed changes do not adversely affect the design function or operation of any structures, systems, and components important to safety.

The probability or consequences of accidents previously evaluated in the [updated final safety analysis report] UFSAR are unaffected by this proposed change because there is no change to any equipment response or accident mitigation scenario. There are no new or additional challenges to fission product barrier integrity.

Therefore, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes do not create any new failure modes for existing equipment or any new limiting single failures.

Additionally the proposed changes do not involve a change in the methods governing normal plant operation and all safety functions will continue to perform as previously assumed in accident analyses. Thus, the proposed changes do not adversely affect the design function or operation of any structures, systems, and components important to safety.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. The proposed changes do not challenge the performance or integrity of any safety-related system.

Therefore, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no effect on the availability, operability, or performance of the safety-related systems and components. A change to a surveillance requirement is proposed based on an alternate method of confirming that the surveillance is met. The Technical Specification Limiting Condition for Operation (LCO) limits are not being changed.

The proposed change will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, New York 10601.

NRC Branch Chief: Travis L. Tate.

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: June 29, 2015, as revised by letter dated December 3, 2015. Publicly-available versions are in ADAMS under

Accession Nos. ML15188A369 and ML15345A389, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). This amendment request proposes to change the RBS Cyber Security Plan (CSP) Implementation Schedule Milestone 8 full implementation date and proposes a revision to the existing operating license Physical Protection license condition. The revised submittal reflects administrative changes made to remove security-related information only, and did not change the technical content of the original submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), in the letter dated December 3, 2015, the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the CSP implementation Schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Meena K. Khanna.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: November 17, 2015. A publicly-available version is in ADAMS under Accession No. ML15327A244.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise Technical Specification (TS) 3.7.16, "Spent Fuel Storage Pool Boron Concentration," and TS 4.3.1, "Fuel Storage Criticality," to allow spent fuel pool storage of nuclear fuel containing a boron-based neutron absorber in the form of zirconium diboride (ZrB_2) Integral Fuel Burnable Absorber.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments do not change or modify the fuel, fuel handling processes, fuel storage racks, number of fuel assemblies that may be stored in the spent fuel pool (SFP), decay heat generation rate, or the SFP cooling and cleanup system. The proposed amendment was evaluated for impact on the following previously-evaluated criticality events and accidents and no impacts were identified: (1) Fuel assembly misloading, (2) loss of spent fuel pool cooling, and (3) spent fuel boron dilution.

Operation in accordance with the proposed amendment will not change the probability of a fuel assembly misloading because fuel movement will continue to be controlled by approved fuel selection and fuel handling procedures. These procedures continue to require identification of the initial and target locations for each fuel assembly and fuel assembly insert that is moved. The consequences of a fuel misloading event are not changed because the reactivity analysis demonstrates that the same subcriticality criteria and requirements continue to be met for the worst-case fuel misloading event.

Operation in accordance with the proposed amendment will not change the probability of a loss of spent fuel pool cooling because the change in fuel burnup requirements and SFP boron concentration have no bearing on the systems, structures, and components involved in initiating such an event. The proposed amendment does not change the heat load imposed by spent fuel assemblies nor does it change the flow paths in the spent fuel pool. Finally, a criticality analysis of the limiting fuel loading configuration confirmed that the condition would remain subcritical at the resulting temperature value. Therefore, the accident consequences are not increased for the proposed amendment.

Operation in accordance with the proposed amendment will not change the probability of a boron dilution event because the incremental changes in TS values have no bearing on the systems, structures, and components involved in initiating or sustaining the intrusion of unborated water to the spent fuel pool. The consequences of a boron dilution event are unchanged because the proposed amendment has no bearing on the systems that operators would use to identify and terminate a dilution event. Also, implementation of the proposed amendment will not affect any of the other key parameters of the boron dilution analysis which includes SFP water inventory, volume of SFP contents, the assumed initial boron concentration of the accident, and the sources of dilution water. Finally, a criticality analysis of the limiting fuel loading configuration confirmed that the dilution event would be terminated at a soluble boron concentration value that ensured a subcritical condition.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of a criticality accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involve incremental changes to TS values, and represent minimal change to existing fuel selection and SFP loading procedures. Further, the proposed changes involve no change to plant systems, structures, components or to the processes for fuel handling. The proposed changes do not involve new SFP loading configurations and do not change or modify the fuel, fuel handling processes, fuel storage racks, number of fuel assemblies that may be stored in the pool, decay heat generation rate, or the spent fuel pool cooling and cleanup system. As such, the proposed changes introduce no new material interactions, man-machine interfaces, or processes that could create the potential for an accident of a new or different type.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The proposed change was evaluated for its effect on current margins of safety as they relate to criticality. The margin of safety for subcriticality required by 10 CFR 50.68(b)(4) is unchanged. The new criticality analysis confirms that operation in accordance with the proposed amendment continues to meet the required subcriticality margin. Increasing the minimum SFP soluble boron concentration ensures that subcriticality margins will be preserved, and increases the margin of safety associated with a boron dilution event.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall, Minneapolis, Minnesota 55401.

NRC Branch Chief: David J. Wrona.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Duke Energy Progress, Inc., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Duke Energy Progress, Inc., Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating, Unit Nos. 2 and 3, Westchester County, New York

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

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[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, 23rd day of March, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

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[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2016–07168 Filed 4–4–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–271 and 50–305; NRC–2015–0200]

Entergy Nuclear Operations, Inc., and Dominion Energy Kewaunee, Inc.; Vermont Yankee Nuclear Power Station and Kewaunee Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for action; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a director's decision on a petition dated March 25, 2014 [sic], filed by Michael Mulligan (the petitioner), requesting that the NRC take action regarding the Vermont Yankee Nuclear Power Station (VY) and the Kewaunee Power Station (KPS). The petitioner's requests and the director's decision are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2015–0200 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0200. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Stephen Koenick, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6631; email: *Stephen.Koenick@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a director's decision (ADAMS Accession No. ML16054A731) on a petition filed by the petitioner on March 25, 2014 [sic] (ADAMS Accession No. ML15090A487). The petition was supplemented by emails dated July 7, 2015 (ADAMS Accession No. ML15198A091), and September 9, 2015 (ADAMS Accession No. ML15286A003).

The petitioner requested that the NRC take a number of actions regarding VY and KPS, which have been permanently shut down and are currently undergoing decommissioning, to include:

- Conduct exigent and immediate full-scale ultrasonic inspections on the VY and the KPS reactor pressure vessels (RPVs), with similar or better technology, as conducted on the RPVs at Doel 3 and Tihange 2, which revealed thousands of cracks.
- Take large borehole samples out of both the VY and KPS RPVs and transport them to a respected metallurgic laboratory for comprehensive offsite testing.
- Issue an immediate NRC report and hold a public meeting on any identified vulnerabilities.
- Ultrasonically test all RPVs in U.S. plants within 6 months if distressed and unsafe results are discovered at VY or KPS.

As the basis of the request, the petitioner asserted that the requested actions should be taken to determine whether foreign operating experience (OpE)—specifically several thousand cracks that have been discovered during testing on the Doel 3 and Tihange 2 RPVs—could have implications on U.S. operating reactors. The petitioner also requested several related actions of the NRC, such as, collaboration with the Belgian regulator, and posed several questions related to water chemistry and the discovered cracks.

On May 19, 2015, the petitioner spoke with the NRC's Petition Review Board. The teleconference provided the petitioner and the licensees an opportunity to provide additional information and to clarify issues cited in the petition. The transcript for that teleconference is available in ADAMS under Accession No. ML15181A127.

The NRC sent a copy of the proposed director's decision to the petitioner and the licensees for comment on January 20, 2016 (ADAMS Accession Nos. ML15286A235, ML15286A265, and ML15286A258, respectively). The petitioner and the licensees were asked to provide comments within 14 days on any part of the proposed director's decision that was considered to be erroneous or any issues in the petition that were not addressed. The petitioner's comments are addressed in the final director's decision. The NRC staff did not receive any comments from the licensees on the proposed director's decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the requests, to require the licensees to conduct exigent and immediate full scale ultrasonic inspections on the VY and the KPS RPVs, with similar or better technology, as conducted on the RPVs at Doel 3 and Tihange 2; to require the licensees to take large borehole samples out of both the VY and KPS RPVs and transport them to a respected metallurgic laboratory for comprehensive offsite testing; and associated follow-on requested actions be denied. The reasons for this decision are explained in the director's decision DD–16–01 pursuant to section 2.206 of title 10 of the *Code of Federal Regulations* (10 CFR) of the Commission's regulations.

The NRC will file a copy of the director's decision with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206. The director's decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 29th day of March 2016.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–07752 Filed 4–4–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–143; Order No. 3204]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a modification to a Global Expedited

Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 7, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On March 30, 2016, the Postal Service filed notice that it has agreed to a second modification to the existing Global Expedited Package Services 3 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Modification and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Modification and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1–2.

The Modification allows the customer to use Priority Mail Express International service, revises the minimum commitment, and amends Annex 1 of the contract. *Id.* at 1.

The Postal Service intends for the Modification to become effective on April 15, 2016. *Id.* The Postal Service asserts that the Modification will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.* Attachment 2.

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than April 7, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2015–143 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Curtis E. Kidd to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than April 7, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–07748 Filed 4–4–16; 8:45 am]

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[1] Notice of the United States Postal Service of Filing Modification Two to Global Expedited Package Services 3 Negotiated Service Agreement, March 30, 2016 (Notice). The modification is an attachment to the Notice (Modification).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–113 and CP2016–141; Order No. 3203]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail & Parcel Select Contract 1 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 6, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail & Parcel Select Contract 1 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–113 and CP2016–141 to consider the Request pertaining to the proposed Priority Mail & Parcel Select Contract 1 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than April 6, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–113 and CP2016–141 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in

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[1] Request of the United States Postal Service to Add Priority Mail & Parcel Select Contract 1 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 29, 2016 (Request).

these proceedings (Public Representative).

3. Comments are due no later than April 6, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–07680 Filed 4–4–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* April 5, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 29, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & Parcel Select Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–113, CP2016–141.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–07676 Filed 4–4–16; 8:45 am]

BILLING CODE 7710–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77479; File No. SR–CBOE–2016–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

March 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

FLEX Broad-Based Index Options provide users with the ability to customize key contract terms, like exercise prices, exercise styles, expiration dates and exercise settlement values. Pursuant to CBOE Rules 24A.5 and 24B.5, to initiate a FLEX transaction, a Submitting Trading Permit Holder submits a Request for Quotes ("RFQs") to a FLEX Post Official or into CBOE's Hybrid System.[3] FLEX-participating Trading Permit Holders ("FLEX Traders"), who have elected to receive RFQs, may then enter bids and offers responsive to each RFQ during a specified Request Response Period.[4]

On March 21, 2016, the Exchange will begin offering Asian style settlement and Cliquet style settlement for certain FLEX Broad-Based Index Options. In general, Asian style settlement provides for payout based on the average of prices of a broad-based index on pre-determined dates over a specified time period, and Cliquet style settlement provides for a payout that is the greater of $0 or the (positive) sum of "capped" monthly returns of a broad-based index on pre-determined dates over a specified period of time. These settlement types are also referred to as "Exotics" due to their untraditional nature.

After surveying potential FLEX Broad-Based Index Options users, the Exchange learned that indexed annuity writers (insurance companies) extensively use over-the-counter ("OTC") options with Asian and Cliquet style settlement as a crediting method.[5] Because of the level of customization that FLEX Broad-Based Index options provide, the Exchange is introducing exchange-traded products that would provide potential market users with an alternative to the OTC market in customized options. The new settlement types were approved pursuant to a CBOE rule filing on July 10, 2015.[6]

Proposed Change

The Exchange proposes an Exotic Surcharge of $0.25 to be assessed on all customer ("C" origin code) Exotic contracts executed on CBOE.[7] The Exotic surcharge will be assessed to those FLEX Traders who trade customer orders in FLEX Asian and Cliquet options.

The Exchange also proposes a FLEX Asian and Cliquet FLEX Trader Incentive Program ("Program"). The Program will provide monthly payments to FLEX Traders who trade orders with origin codes other than "C" against customer orders in FLEX Asian and Cliquet options. A compensation pool equal to the lesser of 20% of customer exchange fees for Exotics (collected from customer orders traded against orders with origin codes other than "C") or $50,000 will be available each month.[8] For example: (1) On SPX contracts, CBOE expects to collect $1.00 per contract (customer transaction fee of $0.44[9] + $0.10 CFLEX surcharge[10] + $0.21 Hybrid 3.0 execution surcharge[11] + $0.25 customer exotic surcharge); (2) on XSP contracts, CBOE expects to collect $0.35 per contract ($0.00 customer transaction fee + $0.10 CFLEX surcharge + $0.25 customer exotic surcharge); (3) on DJX and RUT contracts, CBOE expects to collect $0.53 per contract ($0.18 customer transaction fee + $0.10 CFLEX surcharge + $0.25 customer exotic surcharge); and (4) on NDX contracts, CBOE expects to collect $0.43 per contract ($0.18 standard index exchange fee + $0.25 customer exotic surcharge).

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Rules 24A.5 and 24B.5.

[4] *Id.* See CBOE Rules 24A.5 and 24B.5 for additional information regarding FLEX trading procedures.

[5] A "crediting method" is the method used to measure the change in the underlying index (*e.g.,* point-to-point or annual reset).

[6] *See* Securities Exchange Act Release No. 75312 (July 10, 2016), 80 FR 42152 (July 16, 2016) (SR–CBOE–2015–044).

[7] The Exchange initially filed the proposed fee changes on March 17, 2016 (SR–CBOE–2016–020). On March 18, 2016, the Exchange withdrew that filing and replaced it with SR–CBOE–2016–022. On March 24, 2016, the Exchange withdrew SR–CBOE–2016–022 and replaced it with SR–CBOE–2016–025. On March 28, 2016 the Exchange withdrew SR–CBOE–2016–025 and replaced it with this filing.

A FLEX Trader will be entitled to a pro-rata share of the monthly compensation pool based on the customer order fees collected from customer orders traded against that FLEX Trader's orders with origin codes other than "C" in FLEX Asian and Cliquet options each month. The Exchange believes the Program will incentivize FLEX Traders to provide liquidity in FLEX Asian and Cliquet options. The Program shall be in place until December 31, 2016 or until total average daily volume in Exotics exceeds 15,000 contracts for three consecutive months, whichever comes first. At the time the FLEX Asian & Cliquet FLEX Trader Incentive Program ends, the Exchange will submit a rule filing removing the program from the fee schedule and notice shall be given via regulatory circular.

The following examples demonstrate how the program will work when both the monthly cap is and is not reached.

EXAMPLE 1—MONTHLY CAP NOT REACHED

Index	Customer fees per contract	Total exotic contracts traded for the month, customer-to-orders with origin codes other than "C"	FLEX Trader 1	FLEX Trader 2	FLEX Trader 3
SPX	$1.00	18,000	4,000	6,500	7,500
XSP	0.35	10,500	2,500	3,000	5,000
DJX	0.53	10,500	2,500	3,000	5,000
RUT	0.53	3,000	500	1,000	1,500
NDX	0.43	1,800	300	500	1,000
Total monthly Customer fees collected from Customer orders traded against orders with origin codes other than "C"	29,604.00		6,594.00	9,885.00	13,125.00
FLEX Trader % of fees collected from Customer-to-orders with origin codes other than "C"			22.27%	33.39%	44.34%
Compensation pool amount (i.e. 20% of the Customer fees collected)	5,920.80				
FLEX Trader's pro-rata share of compensation pool			1,318.80	1,977.00	2,625.00

EXAMPLE 2—MONTHLY CAP IS REACHED

Index	Customer fees per contract	Total exotic contracts traded for the month, customer-to-orders with origin codes other than "C"	FLEX Trader 1	FLEX Trader 2	FLEX Trader 3
SPX	$1.00	180,000	40,000	65,000	75,000
XSP	0.35	105,000	25,000	30,000	50,000
DJX	0.53	105,000	25,000	30,000	50,000
RUT	0.53	30,000	5,000	10,000	15,000
NDX	0.43	18,000	3,000	5,000	10,000
Total monthly Customer fees collected from Customer orders traded against orders with origin codes other than "C"	296,040.00		$65,940.00	$98,850.00	$131,250.00
FLEX Trader % of fees collected from Customer-to-orders with origin codes other than "C"			22.27%	33.39%	44.34%
Compensation pool amount (i.e. 20% of the Customer fees collected is 59,208.00, so cap applied)	50,000.00				

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[8] Fees collected from customer-to-customer FLEX Asian and Cliquet option transactions would be excluded from the compensation pool. Further, fees collected from contracts executed in a FLEX Trader's customer-to-customer transactions would not be included to determine the FLEX Trader's share of the compensation pool. Customer fees would be assessed normally on both sides of the transaction.

[9] SPX contract transaction fees are dependent upon premium prices. The parenthetical and the examples below assume executions at a premium price of $1.00 or greater.

[10] CFLEX surcharge fees are capped at $250 per trade and assessed on electronic FLEX transactions. The parenthetical and the examples below assume the $250 cap was not reached on any individual transaction and that the transactions were entered electronically.

[11] The Hybrid 3.0 execution surcharge is assessed for transactions in SPX contracts executed via the Hybrid 3.0 system. The parenthetical and the examples below assume the SPX transactions were executed via the Hybrid 3.0 system.

EXAMPLE 2—MONTHLY CAP IS REACHED—Continued

Index	Customer fees per contract	Total exotic contracts traded for the month, customer-to-orders with origin codes other than "C"	FLEX Trader 1	FLEX Trader 2	FLEX Trader 3
FLEX Trader's pro-rata share of compensation pool			$11,137.01	$16,695.38	$22,167.61

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the Exotic Surcharge of $0.25 is reasonable because the amount of the new fee is within the range of surcharges assessed for customer transactions in other products (for example, customers are currently assessed a $0.21 Hybrid 3.0 Execution Surcharge (which essentially acts as a customer priority surcharge) in SPX options). Furthermore, the Exchange believes customers are willing to pay premium exchange fees on FLEX Asian and Cliquet options to obtain traditional exchange-traded benefits, like price discovery, transparency and centralized clearing.

The Exchange believes that it is equitable and not unfairly discriminatory to assess the Exotic Surcharge to customers and not other market participants because customers are not subject to additional costs for effecting transactions in FLEX Broad-Based Index options that are applicable to other market participants, such as license surcharges. Additionally, customers are not subject to fees for effecting transactions in general that are applicable to other market participants, such as connectivity fees and fees relating to Trading Permits, and are not subject to the same obligations as other market participants, including regulatory and compliance requirements and quoting obligations.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to offer FLEX Traders a pro-rata share of a compensation pool equal to the lesser of 20% of the customer exchange fees collected on FLEX Asian and Cliquet options (from customer orders traded against orders with origin codes other than "C") or $50,000. FLEX Asian and Cliquet options currently trade exclusively in the OTC market. The traditional benefits of exchange-traded options cannot be realized unless there is liquidity in the FLEX markets as compared to OTC. Providing FLEX Traders with incentives to trade FLEX Asian and Cliquet options should result in a more robust price discovery process that will result in better execution prices for customers. In addition, FLEX Traders in broad-based index options have equal opportunity to receive and respond to RFQs in FLEX Asian and Cliquet options and accordingly equal opportunity to receive a pro-rata allocation of the compensation pool (based upon the share of total fees collected from customer contracts against which the respective FLEX Trader trades orders with origin codes other than "C" orders).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While different transaction fees are assessed to different market participants, different market participants have different obligations and circumstances as noted above. Furthermore the incentive program encourages market participants to bring liquidity in FLEX Asian and Cliquet options to the Exchange (which benefits all market participants).

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As of March 21, 2016, CBOE will be the only exchange to trade FLEX Asian and Cliquet options. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants. Finally, as mentioned above, FLEX Asian and Cliquet options on the CBOE will provide competition with OTC products while providing the benefits of trading on an exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and paragraph (f) of Rule 19b–4[16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–026 and should be submitted on or before April 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07686 Filed 4–4–16; 8:45 am]

BILLING CODE 8011–01–P

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32061; File No. 812–14482]

OHA Investment Corporation, et al.; Notice of Application

March 30, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

Applicants: OHA Investment Corporation ("OHAI"); Oak Hill Advisors, L.P. ("OHA"); OHA Funding GP, LLC, OHA Asset Holdings GP, LLC, OHA Asset Holdings, LP, OHA Asset Holdings II, LP, OHA Asset Holdings III, LP, OHA Asset Holdings V, LP, OHA Asset Holdings VI, LP, OHA Funding, LP, OHA/OCI Investments, LLC, OHA Nevada, LLC, Oak Hill Credit Opportunities Master Fund, Ltd., Oak Hill Credit Opportunities Fund, L.P., OHA Diversified Credit Strategies Fund Master, L.P., OHA Diversified Credit Strategies Fund, L.P., OHA Diversified Credit Strategies Fund (Parallel), L.P., OHA Diversified Credit Strategies Master Fund (Parallel II), L.P., OHA Diversified Credit Strategies Tractor Master Fund, L.P., OHA Structured Products Master Fund C, L.P., OHA Asia Customized Credit Fund, L.P., OHA Denmark Customized Credit Fund, L.P., OHA Centre Street Partnership, L.P., OHA Custom Multi-Sector Credit Master Fund, L.P., OHA Custom Multi-Sector Credit Fund, Ltd., OHA Finlandia Credit Fund, L.P., OHA Strategic Credit Master Fund II, L.P., OHA Strategic Credit Fund II, L.P., OHA AD Customized Credit Fund (International), L.P., OHA BCSS SSD, L.P., OHA BCSS SSD, Ltd., OHA MPS SSD, L.P. and OHA MPS SSD, Ltd. (together, the "Existing Co-Investment Affiliates," and the Existing Co-Investment Affiliates together with OHAI and OHA, the "Applicants").

DATES: *Filing Dates:* The application was filed on June 5, 2015 and amended on October 19, 2015, December 18, 2015, and March 18, 2016.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: 1114 Avenue of the Americas, 27th Floor, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819 or Dalia Osman Blass, Assistant Chief Counsel, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. OHAI is a Maryland corporation organized as a non-diversified, closed-end management investment company that has elected to be regulated as a BDC under the Act.[1] OHAI's investment

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[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial

objective is to generate both current income and capital appreciation primarily through debt investments with certain equity components. A majority of the board of directors ("Board")[2] of OHAI are persons who are not "interested persons," as defined in section 2(a)(19) of the Act (the "Independent Directors") of OHAI.

2. Each of the Existing Co-Investment Affiliates would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

3. OHA is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). OHA serves as the investment adviser to OHAI and the Existing Co-Investment Affiliates.

4. Applicants seek an order ("Order") to permit a Regulated Fund[3] (or a Wholly-Owned Investment Sub) (as defined below) and one or more other Regulated Funds (or a Wholly-Owned Investment Sub) and/or one or more Co-Investment Affiliates[4] to participate in the same investment opportunities through a proposed co-investment program (the "Co-Investment Program") where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and rule 17d–1. "Co-Investment Transaction" means any transaction in which a Regulated Fund (or a Wholly-Owned Investment Sub) participated together with one or more other Regulated Funds (or a Wholly-Owned Investment Sub) and/or one or more Co-Investment Affiliates in reliance on the requested Order. "Potential Co-Investment Transaction" means any investment opportunity in which a Regulated Fund (or a Wholly-Owned Investment Sub) could not participate together with one or more other Regulated Funds (or a Wholly-Owned Investment Sub) and/or one or more Co-Investment Affiliates without obtaining and relying on the Order.[5]

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[6] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Co-Investment Affiliate or another Regulated Fund because it would be a company controlled by the Regulated Fund for purposes of sections 17(d) and 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested Order, as though the Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If a Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

6. In selecting investments for the Regulated Funds, an Adviser will consider only the investment objective, investment policies, investment position, capital available for investment ("Available Capital") and other factors relevant to each Regulated Fund. Each of the Co-Investment Affiliates has or will have investment objectives and strategies that are similar to or overlap with the Objectives and Strategies[7] of each Regulated Fund. To the extent there is an investment opportunity that falls within the Objectives and Strategies of one or more Regulated Funds and the investment objectives and strategies of one or more of the Co-Investment Affiliates, the Advisers would expect such Regulated Funds and Co-Investment Affiliates to co-invest with each other, with certain exceptions based on Available Capital or diversification.[8]

7. After making the determinations required in conditions 1 and 2(a), other than in the case of pro rata Dispositions (as defined below) and Follow-On Investments,[9] as provided in conditions 7 and 8, the applicable Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board that are eligible to vote under section 57(o) of the Act (the "Eligible Directors"). The "required majority," as defined in section 57(o) of the Act ("Required Majority"),[10] of a Regulated Fund will approve each Co-Investment Transaction prior to any investment by the Regulated Fund.

8. All subsequent activity, meaning either to (a) sell, exchange, or otherwise dispose of an investment (collectively, a "Disposition") or (b) complete a Follow-On Investment, in respect of an investment acquired in a Co-Investment Transaction will also be made in accordance with the terms and conditions set forth in the application. With respect to the pro rata Dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata Disposition or Follow-On Investment without

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assistance with respect to the issuers of such securities.

[2] The term "Board" refers to the board of directors of any Regulated Fund (as defined below).

[3] "Regulated Funds" means OHAI and any future closed-end investment companies (a) that are registered under the Act or have elected to be regulated as BDCs under the Act, (b) whose investment adviser is an Adviser, and (c) that intend to participate in the Co-Investment Program. The term "Adviser" means OHA and any investment adviser controlling, controlled by or under common control with OHA.

[4] "Co-Investment Affiliates" means the Existing Co-Investment Affiliates and any Future Co-Investment Affiliate. "Future Co-Investment Affiliate" means any entity whose (i) investment adviser is an Adviser, (ii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iii) that is not a subsidiary of a Regulated Fund, and (iv) that intends to participate in the Co-Investment Program.

[5] All existing entities that currently intend to rely on the Order have been named as applicants. Any other existing or future entity that relies on the Order in the future will comply with the terms and conditions of the application.

[6] The term "Wholly-Owned Investment Sub" means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund; (iii) with respect to which the Board of a Regulated Fund has the sole authority to make all determinations with respect to the Wholly-Owned Investment Sub's participation under the conditions to the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

[7] The term "Objectives and Strategies," with respect to each Regulated Fund, means the Regulated Fund's investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N–2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the "1933 Act"), or under the Securities Exchange Act of 1934 and the Regulated Fund's report to stockholders.

[8] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[9] "Follow-On Investment" means any additional investment in an existing portfolio company, the exercise of warrants, conversion privileges or other similar rights to acquire additional securities of the portfolio company.

[10] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Co-Investment Affiliate and Regulated Fund in such Disposition or Follow-On Investment is proportionate to its outstanding investments in the issuer immediately preceding the Disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata Dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such Disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata Dispositions and Follow-On Investments with the result that all Dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

9. No Independent Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

10. If an Adviser or its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Co-Investment Affiliates (collectively, the "Holders") own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election. Applicants believe that this condition will ensure that the Independent Directors will act independently in evaluating the Co-Investment Program, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the other Regulated Funds and Co-Investment Affiliates may be deemed to be a person related to a Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that any Order of the Commission granting the requested relief will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for a Co-Investment Affiliate or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the applicable Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, the Adviser will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Co-Investment Affiliates, collectively, in the same transaction, exceeds the amount of the investment opportunity, then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the maximum amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Fund and each Co-Investment Affiliate to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Co-Investment Affiliates only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its stockholders and do not involve overreaching in respect of the Regulated

Fund or its stockholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) the interests of the Regulated Fund's stockholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by the other Regulated Funds or any Co-Investment Affiliates would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of any other Regulated Fund or Co-Investment Affiliate; provided that, if any other Regulated Fund or Co-Investment Affiliate, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

(A) the Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the Adviser agrees to, and does, provide periodic reports to the Board of the Regulated Fund with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any other Regulated Fund, or any Co-Investment Affiliate, or any affiliated person of either receives in connection with the right of any other Regulated Fund or a Co-Investment Affiliate to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Co-Investment Affiliates (which each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Co-Investment Affiliates, the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by sections 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds and Co-Investment Affiliates during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8 below,[11] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Co-Investment Affiliate, or any affiliated person of another Regulated Fund or Co-Investment Affiliate is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Co-Investment Affiliate. The grant to a Co-Investment Affiliate or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Co-Investment Affiliate or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed Disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the Disposition.

(b) Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to any participating Co-Investment Affiliates and any other Regulated Funds.

(c) A Regulated Fund may participate in such Disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Co-Investment Affiliate and Regulated Fund in such Disposition is proportionate to its outstanding investments in the issuer immediately preceding the Disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this condition. In all other cases, the applicable Adviser will provide its written recommendation as to the Regulated Fund's participation to the Regulated Fund's Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Co-Investment Affiliate and each Regulated Fund will bear its own expenses in connection with any such Disposition.

8. (a) If any Co-Investment Affiliate or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Co-Investment Affiliate and each Regulated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; (ii) the Board of the

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[11] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Follow-On Investments made in accordance with this condition. In all other cases, the applicable Adviser will provide its written recommendation as to the Regulated Fund's participation to the Regulated Fund's Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the Follow-On Investment is not based on the Co-Investment Affiliates' and the Regulated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and Co-Investment Affiliates, collectively, in the same transaction, exceeds the amount of the investment opportunity; then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the maximum amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Independent Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by the Co-Investment Affiliates and the other Regulated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act), of any Co-Investment Affiliate.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Co-Investment Affiliates and the Regulated Funds, be shared by the participating Co-Investment Affiliates and the participating Regulated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

13. Any transaction fee[12] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Co-Investment Affiliates and Regulated Funds on a pro rata basis based on the amount they each invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Co-Investment Affiliates and Regulated Funds based on the amount each invests in such Co-Investment Transaction. None of the Co-Investment Affiliates, the Regulated Funds, the Advisers nor any affiliated person of the Regulated Funds or Co-Investment Affiliates will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Co-Investment Affiliates and the Regulated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C), and (b) in the case of the Advisers, investment advisory fees paid in accordance with their respective investment advisory agreements with the Regulated Funds and Co-Investment Affiliates).

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07689 Filed 4–4–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 7, 2016 at 4 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

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[12] Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 31, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–07829 Filed 4–1–16; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77476; File No. SR–BATS–2016–17]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend BATS' Rules Regarding the Auction Process for Securities Subject to an Initial Public Offering

March 30, 2016.

I. Introduction

On February 10, 2016, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BATS Rule 11.23, entitled "Auctions," with regard to the handling of orders during an initial public offering ("IPO") auction. On February 22, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 29, 2016.[4] The Commission has received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to: (1) Amend BATS Rule 11.23(a)(8) to modify the term "Eligible Auction Order" to delineate the types of orders that may participate in an auction for a BATS listed corporate security[5] in an IPO on the Exchange ("IPO Auction");[6] and (2) amend subparagraphs (d)(1)(A) and (d)(2) of BATS Rule 11.23 to modify the rules governing the Quote-Only Period[7] during an Auction.

A. Changes to the Definition of Eligible Auction Order

Currently, "Eligible Auction Order" is defined as any Market-On-Open ("MOO"),[8] Limit-On-Open ("LOO"),[9] Late-Limit-On-Open ("LLOO"),[10] Market-On-Close ("MOC"),[11] Limit-On-Close ("LOC"),[12] or Late-Limit-On-Close ("LLOC")[13] order that is entered in compliance with its respective cutoff for an Opening or Closing Auction,[14] any RHO[15] order prior to the Opening Auction, any Limit Order[16] or Market Order[17] not designated to exclusively participate in the Closing Auction entered during the Quote-Only Period of an IPO Auction,[18] and any Limit or Market Order not designated to exclusively participate in the Opening or Closing Auction entered during the Quote-Only Period of a Halt Auction.[19] The Exchange proposes to amend the definition of Eligible Auction Orders to either reject, convert, or ignore certain types of orders.[20] As proposed, Limit Orders and BATS Market Orders, the two main types of orders offered by the Exchange, that are entered during the Quote-Only Period would be allowed to participate in an IPO Auction for a BATS listed corporate security provided they do not also include one or more of the modifiers described below.[21]

Types of Orders to be Accepted or Rejected

The Exchange proposes to exclude the following types of orders from participation in an IPO Auction and would reject such orders: (1) Stop Orders[22] and Stop Limit Orders;[23] (2) Pegged Orders,[24] Mid-Point Peg Orders,[25] Market Maker Peg Orders[26] and Supplemental Peg Orders;[27] (3) Minimum Quantity Orders[28] and Discretionary Orders;[29] (4) MOC, LOC and LLOC orders; and (5) orders with a time-in-force of Fill-or-Kill ("FOK")[30] and orders with a time-in-force of Good-'til-Day ("GTD")[31] with an expiration time earlier than 4:00 p.m. Eastern Time. Such orders entered to participate in an IPO Auction would be rejected.[32]

Types of Orders to be Converted

The Exchange also proposes to specify the types of orders that would be converted by the Exchange for purposes of participating in the IPO Auction for a BATS listed corporate security.[33] Specifically, under the proposal, the following types of orders would be converted: (1) Market Orders with a time-in-force of Immediate-or-Cancel ("IOC")[34] would be converted to a MOO and a Limit Order with a time-in-force of IOC would be converted to a LOO; (2) orders with a time-in-force of RHO would be converted to orders with a time-in-force of Day; and (3) any orders eligible to be routed would be converted to a BATS Only Order.[35] Under the proposal, upon completion of the IPO Auction, any remainder not executed in the auction would be placed on the BATS Book, executed, cancelled or routed away in accordance with the converted terms of the order. Such orders would not revert back to the original type modifier the User included with the order.[36]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected a technical error regarding incorrect terminology used in a footnote and clarified a sentence regarding an order with a time-in-force of "Regular Hours Only" ("RHO") that would be converted to an order with a time-in-force of "Day" under the proposed rule change.

[4] *See* Securities Exchange Act Release No. 77222 (February 24, 2016), 81 FR 10345 (SR–BATS–2016–17) ("Notice").

[5] A BATS listed corporate security is a security listed on the Exchange pursuant to Chapter 14 of the Exchange's Rules that is not an Exchange Traded Product ("ETP") listed on the Exchange pursuant to Exchange Rule 14.11.

[6] *See* Notice, *supra* note 4, at 10345–48. The Exchange also proposes a conforming change to BATS Rule 11.1, entitled "Hours of Trading and Trading Days." *See* Notice, *supra* note 4, at 10346, n.19.

[7] *See* BATS Rule 11.23(a)(17) (defining "Quote-Only Period" as a designated period of time prior to a Halt Auction, a Volatility Closing Auction, or an IPO Auction during which Users may submit orders to the Exchange for participation in the auction). A "User" is means any Member or Sponsored Participant who is authorized to obtain access to the Exchange's system pursuant to BATS Rule 11.3. *See* BATS Rule 1.5(cc).

[8] *See* BATS Rule 11.23(a)(16).

[9] *See* BATS Rule 11.23(a)(14).

[10] *See* BATS Rule 11.23(a)(12).

[11] *See* BATS Rule 11.23(a)(15).

[12] *See* BATS Rule 11.23(a)(13).

[13] *See* BATS Rule 11.23(a)(11).

[14] The Opening and Closing Auction processes are described in BATS Rules 11.23(b) and (c).

[15] *See* BATS Rule 11.9(b)(7).

[16] *See* BATS Rule 11.9(a)(1).

[17] *See* BATS Rule 11.9(a)(2).

[18] *See* BATS Rule 11.23(d)(1)(A) (describing Quote-Only Period).

[19] *See* BATS Rule 11.23(a)(8). The Exchange also proposes to amend BATS Rule 11.1(a) to make clear that it will not accept BATS Market Orders that are not Eligible Auction Orders prior to 8:00 a.m. Eastern Time, *see* Notice, *supra* note 4, at 10346, n.19, and to make conforming changes to BATS Rules 11.23(b) and 11.23(c).

[20] *See* Notice, *supra* note 4, at 10345.

[21] *See* Notice, *supra* note 4, at 10345–48. The Exchange does not propose to amend the types of Eligible Auction Orders that may participate in an auction for a newly listed ETP. *See id.* at 10345. An Exchange Traded Product is a security that is listed on the Exchange pursuant to BATS Rule 14.11.

[22] *See* BATS Rule 11.9(c)(17).

[23] *See* BATS Rule 11.9(c)(18).

[24] *See* BATS Rule 11.9(c)(8).

[25] *See* BATS Rule 11.9(c)(9).

[26] *See* BATS Rule 11.9(c)(16).

[27] *See* BATS Rule 11.9(c)(19).

[28] *See* BATS Rule 11.9(c)(5).

[29] *See* BATS Rule 11.9(c)(10).

[30] *See* BATS Rule 11.9(b)(6).

[31] *See* BATS Rule 11.9(b)(4).

[32] *See* proposed BATS Rule 11.23(a)(8)(A). *See also* Notice, *supra* note 4, at 10346.

[33] *See* proposed BATS Rule 11.23(a)(8)(B). *See also* Notice, *supra* note 4, at 10346–47.

[34] *See* BATS Rule 11.9(b)(1).

Modifiers To Be Ignored

The Exchange also proposes to ignore certain order modifiers for orders that have been entered to participate in an IPO Auction.[37] Specifically, the following modifiers would be handled as follows during an IPO Auction: (1) A Match Trade Prevention ("MTP") modifier,[38] would not be applied until the IPO Auction is complete, but it would be applied in the event any unexecuted portion is placed on the BATS Book;[39] (2) an instruction to treat an order as an Attributable Order[40] would not be applied in an IPO Auction and would be permanently ignored with respect to the order, meaning that any such order's execution would be displayed anonymously;[41] (3) an Intermarket Sweep Order ("ISO")[42] Instruction or a Post Only instruction included with a Limit Order would not be applied in an IPO Auction and would be permanently ignored with respect to the order;[43] (4) the Maximum Remove Percentage of a Partial Post Only at Limit Order[44] would not be applied in an IPO Auction and would be permanently ignored with respect to the order; and (5) the replenishment range of a Reserve Order with a Random Replenishment instruction[45] would not be applied in an IPO Auction and would be permanently ignored with respect to the order.[46] Thus, with the exception of MTP modifiers, all modifiers listed above would not be further considered with respect to an order upon completion of the IPO Auction, and any remainder not executed in the auction would be placed on the BATS Book, executed, cancelled, or routed away in accordance with the modified terms of the order.[47]

B. Changes to the Quote-Only Period

The Quote-Only Period is the designated period of time prior to a Halt Auction, a Volatility Closing Auction, or an IPO Auction during which Users may submit orders to the Exchange for participation in the auction.[48] Currently, the Quote-Only Period for an IPO Auction begins fifteen (15) minutes plus a short random period prior to such IPO Auction.[49]

The Exchange proposes to extend the Quote-Only Period with respect to an IPO Auction for an ETP such that it would commence at 8:00 a.m.,[50] which is the beginning of the Exchange's Pre-Opening Session.[51] The Exchange also proposes to extend the Quote-Only Period with respect to an IPO Auction for a BATS listed corporate security to begin at a time announced in advance by the Exchange that would be between fifteen (15) and thirty (30) minutes plus a short random period prior to such IPO Auction.[52] The Exchange would determine the length of time of the Quote-Only Period for a BATS listed corporate security (*i.e.*, what time between fifteen (15) and thirty (30) minutes) in consultation with the issuer of the IPO Security and would announce the length of time for the Quote-Only Period in advance of the commencement of such period.[53] The Exchange also proposes to make a technical amendment to paragraph (d)(2)(A) of BATS Rule 11.23 to replace the current term "quotation only period" with the defined term "Quote Only Period."

Finally, the Exchange proposes to extend the Quote-Only Period in the event of a technical or systems issue at the Exchange that may impair the ability of Users to participate in the IPO Auction or of the Exchange to complete the IPO Auction.[54] As proposed, the Exchange would notify market participants in the event of any extension to the Quote-Only Period, including due to a technical or systems issue during an IPO Auction. Such notice would provide details regarding the circumstances and length of the extension.[55]

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[56] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[57] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Changes to the Definition of Eligible Auction Order

The Exchange believes that refining the types of orders processed in an IPO Auction and/or those that would be placed onto the BATS Book[58] following such IPO Auction would simplify and reduce the complexity of the IPO Auction for BATS listed corporate securities.[59] The Exchange further believes that doing so would aid in ensuring a robust, but streamlined, IPO Auction process for a newly listed corporate securities.[60]

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[35] *See* proposed BATS Rule 11.23(a)(8)(B). *See also* Notice, *supra* note 4, at 10346.

[36] *See* Notice, *supra* note 4, at 10346.

[37] *See* proposed BATS Rule 11.23(a)(8)(C). *See also* Notice, *supra* note 4, at 10347–48.

[38] *See* BATS Rule 11.9(f).

[39] Pursuant to BATS Rule 11.9(f), any incoming order designated with an MTP modifier is normally prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same User. Under the proposal, the MTP Modifier would be ignored during an IPO Auction, and such opposite side orders originating from the same User would be eligible to be matched against each other. Upon completion of the IPO Auction, an MTP modifier would be recognized again, and any remainder not executed in the auction would be placed on the BATS Book and executed or cancelled in accordance with the original MTP modifier appended to the order. *See* Notice, *supra* note 4, at 10347.

[40] *See* BATS Rule 11.9(c)(14).

[41] *See* Notice, *supra* note 4, at 10347.

[42] *See* BATS Rule 11.9(d).

[43] *See* Notice, *supra* note 4, at 10347.

[44] *See* BATS Rule 11.9(c)(7).

[45] *See* Notice, *supra* note 4, at 10348, n.38 (citing BATS Rule 11.9(c)(1)(A)).

[46] *See* Notice, *supra* note 4, at 10347–48.

[47] *See* Notice, *supra* note 4, at 10348.

[48] *See* BATS Rule 11.23(a)(17). *See also* Notice, *supra* note 4, at 10348.

[49] *See* BATS Rule 11.23(d)(1)(A).

[50] *See* proposed BATS Rule 11.23(d)(1)(A).

[51] *See* BATS Rule 1.5(r).

[52] *See* proposed BATS Rule 11.23(d)(1)(A).

[53] *See* Notice, *supra* note 4, at 10348. According to the Exchange, the scope of market participants notified regarding the anticipated commencement of the Quote-Only Period (or extension of Quote-Only Period) would include, but would not be limited to Members of the Exchange. Such notice would also include those market participants, individuals or entities that have subscribed to the Exchange's notification system. The Exchange represents that it intends to send notifications regarding the Quote-Only Period via email, as it does with most public notifications today. The Exchange further notes that it does, in certain circumstances, post information on its public Web site in addition to email dissemination. *See id.*, n.41.

[54] *See* proposed BATS Rule 11.23(d)(2)(B)(iv). *See also* Notice, *supra* note 4, at 10348. Currently, the Exchange may extend the Quote-Only Period under Rule 11.23(d)(2)(B) for an Auction beyond the stated timeframes where: (i) There are unmatched Market Orders on the Auction Book associated with the auction; (ii) in an IPO Auction, the underwriter requests an extension; or (iii) where the Indicative Price moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the auction. *See id.*

[55] *See* proposed BATS Rule 11.23(d)(2)(C). *See also* Notice, *supra* note 4, at 10348.

[56] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[57] 15 U.S.C. 78f(b)(5).

[58] *See* BATS Rule 1.5(e) (defining BZX Book as the System's electronic file of orders).

[59] *See* Notice, *supra* note 4, at 10345.

Specifically, the Exchange believes it is reasonable to reject orders with the characteristics described above from participating in the IPO Auction because doing so would aid in reducing systems complexity and risk associated both with completing the IPO Auction and with transferring any unexecuted portion of such orders to the BATS Book once the auction is complete.[61] Further, the Exchange states that the orders it proposes to reject are not commonly utilized and therefore the rejection of such orders should not have a significant impact on its Members.[62] In addition, the Exchange believes these types of orders contain certain attributes that are not compatible with the IPO Auction process.[63]

In addition, in contrast to those orders that would be rejected, the Exchange notes that the types of orders the Exchange proposes to convert are more commonly used by Members than those order types the Exchange proposes to reject.[64] The Exchange believes that it is reasonable to convert rather than reject the order types described above because such orders are more commonly used by Members and doing so would accommodate those Members that have automated their systems to send orders to the Exchange without significantly altering the operation of the order from what the Member originally instructed.[65] According to the Exchange, such Members also may not be able to re-submit a rejected order with the correct modifier in time to participate in the IPO Auction.[66] Therefore, the Exchange notes that it is concerned that rejecting, rather than converting those types of orders as proposed, would inappropriately burden those Members and deter their participation in an IPO Auction.[67]

The Exchange further believes it is reasonable to ignore certain modifiers on an order during the IPO Auction because doing so would simplify and reduce the complexity of the auction process or such modifiers are incompatible with the IPO Auction process.[68] For instance, the Exchange believes that it is reasonable to ignore instructions to treat an order as an Attributable Order because orders entered into an IPO Auction are not displayed individually, but rather, are displayed as aggregated interest in the Exchange's data feeds.[69]

For the reasons stated above, the Commission believes that amending the definition of Eligible Auction Orders to reject, convert, or ignore certain types of orders in connection with the IPO Auction process for a BATS listed corporate security is consistent with Section 6(b)(5) of the Act. The Commission believes that it is reasonable for the Exchange to seek to simplify and reduce the complexity of the IPO Auction process and to clearly describe the treatment of those orders and modifiers submitted during an IPO Auction that would be rejected, converted, or ignored.[70]

B. Changes to the Quote-Only Period

The Exchange states that it believes that a longer Quote-Only Period for ETPs is warranted because it will encourage the entry of orders prior to an IPO Auction for newly issued ETPs, which typically have lower participation rates especially as compared to IPO Auctions for corporate securities.[71] The Exchange further states that while an IPO Auction for a corporate security is typically conducted at least thirty minutes after the commencement of Regular Trading Hours, an IPO Auction for a newly issued ETP is typically conducted at the beginning of Regular Trading Hours (*i.e.*, 9:30 Eastern Time), and thus may not afford much time for participants to enter orders prior to such auction.[72]

In addition, the Exchange believes it is reasonable to extend the Quote-Only Period for a BATS listed corporate security to begin at a time announced in advance by the Exchange that shall be between fifteen and thirty minutes plus a short random period prior to such IPO Auction because it will allow market participants more time to enter orders to participate in the IPO Auction.[73] Further, according to the Exchange, such an extension would afford underwriters more time to evaluate the scope of demand for, and supply of, the security subject to the IPO Auction ("IPO Security"), which in turn, would allow the underwriter to make a more informed decision about the appropriate time to initiate the opening of the IPO Security through the IPO Auction.[74]

The Exchange also believes it is reasonable to extend the Quote-Only Period in the event of a technical or systems issue at the Exchange that may impair the ability of market participants to participate in an IPO Auction as such an event may prevent market participants from entering orders during the Quote-Only Period, which in turn could result in less liquidity that may prevent the underwriters from adequately accessing the trading interest of the IPO Security.[75] Thus, the Exchange believes it is reasonable to extend the Quote-Only Period in the event of a technical or systems issue to provide market participants adequate time to enter orders to participate in the IPO auction.[76] Finally, the Exchange states that its proposal to make a technical amendment to paragraph (d)(2)(A) of BATS Rule 11.23 to replace the current term "quotation only period" with the defined term "Quote Only Period" is intended to make the rule easier to understand and avoid potential investor confusion.[77]

For the foregoing reasons, the Commission believes that the proposed changes to the Quote-Only Period are consistent with the Act because these changes are designed to allow market participants additional time in advance of an IPO Auction, and the proposed technical amendment to BATS Rule 11.23(d)(2)(A) conforms the terminology used in that section of BATS Rule 11.23(d) with the current terminology used in the BATS rule book.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[78] that the proposed rule change (SR–BATS–2016–17) is approved.

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[60] *See id.*

[61] *See id.* at 10346.

[62] *See id. See also* BATS Rule 1.5(n)(defining "Member" as any registered broker or dealer that has been admitted to membership in the Exchange).

[63] *See* Notice, *supra* note 4, at 10346.

[64] *See id.* at 10346–47.

[65] *See id.* at 10347.

[66] *See id.*

[67] *See id.*

[68] *See id.* at 10347–49.

[69] *See id.* at 10347.

[70] The Commission also believes that the Exchange's proposal to amend BATS Rule 11.1(a) to make clear that it will not accept BATS Market Orders that are not Eligible Auction Orders prior to 8:00 a.m. Eastern Time and to make conforming changes to BATS Rules 11.23(b) and 11.23(c) is consistent with Act. The Commission believes that these proposed changes would help reduce confusion among Members regarding the operation of BATS Market Orders that are entered prior to the start of the Exchange's Pre-Opening Session and the operation of the Exchange's rules.

[71] *See* Notice, *supra* note 4, at 10348.

[72] *See id.*

[73] *See id.* at 10348–49.

[74] *See id.*

[75] *See id.* at 10348–49.

[76] *See id.*

[77] *See id.* at 10349.

[78] 15 U.S.C. 78s(b)(2).

[79] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07683 Filed 4–4–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77475; File No. SR–Phlx–2016–36]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Partnerships

March 30, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete these Rules: 902 entitled, "Admission to Partnership-Partnership Arrangements"; and 907 entitled, "Partners and Officers." The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete certain Phlx membership rules in order to harmonize and modernize the Exchange's Rulebook. Specifically, Exchange proposes to delete Rules: 902 entitled, "Admission to Partnership-Partnership Arrangements"; and 907, entitled "Partners and Officers." Rule 902 was retained through the demutualization process in 2004 and is no longer applicable to the business today. Although Rule 907 was established following the demutualization the requirements are no longer necessary. The proposed changes related to the former need for the Exchange to more acutely understand the ownership structure of partnerships as discussed in greater detail below.

Rule 902 was applicable when Phlx offered seats to its members, prior to demutualization. Before demutualization, Phlx seats conveyed ownership of the Exchange, which created a greater obligation on Phlx to gather information on the members' corporate structure. Specifically, Phlx was obligated to maintain a heighted vigilance on the structure, ownership, and change of control in a partnership in order to ensure the financial integrity of its ownership structure.

Today, permits are issued to Exchange members and member organizations. The Exchange no longer needs to differentiate ownership structure as required under Rule 902 and 907 because the permit structure conveys no ownership of the Exchange to the membership. These membership rules related to partnerships are no longer applicable today. The distinctions regarding the admission of member as a partnership, as compared to a corporation, are no longer relevant. The Exchange proposes to remove these outdated Rules.

Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that Rules 902 and 907(a) are burdensome and unnecessary. These rules regarding admission of partnerships and changes to the partnership serve no modern purpose to the Exchange. The former ownership structure required the Exchange to be vigilant of the ownership structure of its members in case of financial distress or bankruptcy as the seat structure was vital to the financial condition of the Exchange. Before demutualization, members had an ownership interest in the Exchange. Today, permits convey no ownership and therefore such vigilance as to the ownership structure of members is not warranted.

The only changes to the rules since demutualization were in 2009 in order to replace the term "Membership Committee" with "Membership Department," which was done in conjunction with other changes to the Exchange's standing committees and corporate governance processes in order to make the Exchange more similar to the other Nasdaq SROs.

Rule 907(b) is burdensome and unnecessary as well. The obligations on the firm, its employees, and officers are not predicated on the requirement that one of the officers be a member of the exchange, therefore this rule has become obsolete. These rules have remained on the books of the exchange for several years, despite their obsolescence because they were not inconsistent with the membership process and the overall regulatory goals of the Exchange.

The removal of Rules 902 and 907 will promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in facilitating transactions in securities by removing burdensome requirements so that members and member organizations may properly focus on other relevant requirements which benefit the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed amendments seek to delete certain unnecessary rules which today burden partnerships over corporations.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

The deletions of Rules 902 and 907(a) will remove a current burden on competition which requires members and member organizations that are partnerships to disclose unnecessary information as compared to other corporate entities not structured as a partnership.

The deletion of 907(b) will remove a current burden on competition by eliminating the need to identify an officer that is a member of the exchange which will have no practical effect on the exchange's interaction with the company. The Exchange does not believe that there is any impact on inter-market competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2016–36 and should be submitted on or before April 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07682 Filed 4–4–16; 8:45 a.m.]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77478; File No. SR–NYSEMKT–2016–40]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Requirements for the Collection and Transmission of Data Pursuant to Appendices B and C of the Regulation NMS Plan To Implement a Tick Size Pilot Program

March 30, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 29, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt requirements for the collection and transmission of data pursuant to Appendices B and C of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan"). The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[5] 15 U.S.C. 78s(b)(3)(a)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, New York Stock Exchange LLC, NYSE Arca, Inc., the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX"), BATS BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. ("BYX"), Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, and the Nasdaq Stock Market LLC (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program ("Pilot").[6] The Participants filed the Plan to comply with an order issued by the Securities and Exchange Commission ("Commission") on June 24, 2014.[7] The Plan[8] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require member organizations to comply with the applicable data collection requirements of the Plan.[10]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).[11] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[12] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[13] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[14] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[15] will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (*e.g.,* transaction costs by order size), execution quality (*e.g.,* speed of order executions), market maker activity, competition between trading venues (*e.g.,* routing frequency of market orders), transparency (*e.g.,* choice between displayed and hidden orders), and market dynamics (*e.g.,* rates and speed of order cancellations).[16] The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.[17]

Compliance With the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.[18] Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers[19] to submit variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, *e.g.,* from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.[20] Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer ("NBBO") quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority ("DEA") for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

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[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[9] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[10] The Exchange proposes to provide in the introduction paragraph to Rule 67—Equities that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[11] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[12] *See* Section VI(B) of the Plan.

[13] *See* Section VI(C) of the Plan.

[14] *See* Section VI(D) of the Plan.

[15] 17 CFR 242.611.

[16] *See* Approval Order, 80 FR at 27543.

[17] *Id.*

[18] The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange plans to separately propose Rules 67(a)—Equities and 67(c)–(e)—Equities that would require compliance by its member organizations with the applicable quoting and trading requirements specified in the Plan and has reserved Rules 67(a)—Equities and (c)–(e)—Equities for this purpose. *See, e.g.,* Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015) (SR–NYSE–2015–46) ("Quoting & Trading Rules Proposal"), as amended by Partial Amendment No. 1 to the Quoting & Trading Rules Proposal.

[19] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[20] 17 CFR 242.605.

The Exchange is proposing new Rule 67(b)—Equities to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Rule 67(b)—Equities is substantially similar to the proposed rule changes by BZX that were recently approved by the Commission to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[21]

Proposed Rule 67(b)(1)—Equities requires that a member organization that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a member organization that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Proposed Rule 67(b)(2)—Equities provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Data Collection Securities[22] and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the member organization that generated the data.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker[23] engaging in trading activity on a Trading Center operated by the Participant. The Exchange is therefore proposing Rule 67(b)(3)—Equities to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 67(b)(3)(A)—Equities provides that a member organization that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange understands that some member organizations may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan's data collection requirements. In such case, a DEA that is not a Participant of the Plan would not be required to collect the required data and may not establish procedures for which member organizations it acts a DEA for to report the data required under subparagraphs (b)(3)(A) of Rule 67—Equities and in accordance with Item IV of Appendix B of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 67—Equities to require a member organization that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 67(b)—Equities to FINRA, which is a Participant to the Plan and is to collect data relating to Item IV of Appendix B of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[24]

Proposed Rule 67(b)(3)(C)—Equities provides that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to Rule 67(b)(3)(A)—Equities and Rule 67(b)(3)(B)—Equities above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw

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[21] *See* Securities Exchange Act Release Nos. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (order approving SR–BATS–2015–102); and 77310 (March 7, 2016) (notice for comment and immediate effectiveness of SR–BATS–2016–27). The Exchange proposes a non-substantive difference to use the term "member organization" instead of "member" in proposed Rule 67.

[22] The Exchange is proposing *Supplementary Material* .90 to proposed Rule 67(b)—Equities to define "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the pre-pilot measurement period, and the CADV threshold shall be applied to the duration of the pre-pilot measurement period. The pre-pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month pre-pilot period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only.

[23] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[24] FINRA members for which FINRA is their DEA should refer to the Market Maker Transaction Data Technical Specification on the FINRA Web site at *http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs.pdf.*

Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Rule 67(b)(4)—Equities to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 67(b)(4)(A)—Equities requires that a member organization that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The proposed rule also requires member organizations to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

For the same reasons set forth above for subparagraph (b)(3)(B) to Rule 67—Equities, the Exchange proposes to adopt subparagraph (b)(4)(B) to Rule 67—Equities to require a member organization that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 67(b)—Equities to FINRA. As stated above, FINRA is a Participant to the Plan and is to collect data relating to Item I of Appendix C of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[25]

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) Ticker symbol; (ii) the Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers. Therefore, the Exchange proposes to adopt Rule 67(b)(5)—Equities providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange is also proposing, through *Supplementary Material* to proposed Rule 67(b)—Equities, to clarify other aspects of the data collection requirements. *Supplementary Material* .10 to proposed Rule 67(b)—Equities relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a "yes/no" field relating to the Retail Investor Order flag. The Exchange is proposing *Supplementary Material* .10 to proposed Rule 67(b)—Equities to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report "y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "n" for all other instances.[26]

The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (*i.e.,* Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

Supplementary Material .20 to proposed Rule 67(b)—Equities requires that member organizations populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.[27] Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor ("SIP") calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock's reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (*e.g.,* the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Supplementary Material .20 to proposed Rule 67(b)—Equities also requires, for securities that may trade in a foreign market, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) Fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in securities that may trade in a foreign market Pilot and Pre-Pilot Securities as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the member. The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan's quoting and trading requirements, and could otherwise compromise the integrity of the data.

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[25] *Id.*

[26] FINRA, on behalf of the Plan Participants submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated February 10, 2016 ("Exemption Letter").

[27] *See* National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) ("Limit-Up Limit-Down Plan").

Supplementary Material .30 to proposed Rule 67(b)—Equities relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).[28] The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.[29]

Supplementary Material .40 to proposed Rule 67(b)—Equities relates to the relevant measurement for purposes of Appendix B.I.a(31)–(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through *Supplementary Material* .40 to proposed Rule 67(b)—Equities.[30] This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Supplementary Material .50 to proposed Rule 67(b)—Equities addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. The Exchange and the other Participants have determined that it is appropriate to include separate categories for these orders types for purposes of Appendix B reporting. The Exchange is therefore proposing *Supplementary Material* .50 to proposed Rule 67(b)—Equities to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included an as order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing *Supplementary Material* .60 to proposed Rule 67(b)—Equities to clarify the scope of the Plan as it relates to member organizations that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a member organization that only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order[31] shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing *Supplementary Material* .60 to proposed Rule 67(b)—Equities to make this clarification.

The Exchange is proposing *Supplementary Material* .70 to proposed Rule 67(b)—Equities to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the member organization's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement thats [sic] the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its Web site pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.[32]

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[28] Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

[29] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra* note 26.

[30] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra* note 26.

[31] The Exchange notes that where a member organization purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would subject to subject to Appendix B of the Plan.

[32] In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, *e.g.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program). *See also* Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J.

Continued

The Exchange is proposing *Supplementary Material* .80 to proposed Rule 67(b)—Equities to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing *Supplementary Material* .80 to proposed Rule 67(b)—Equities to make this change.[33] The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.[34]

Finally, the Exchange is proposing *Supplementary Material* .90 to proposed Rule 67(b)—Equities to address the securities that will be used for data collection purposes prior to the commencement of the Pilot Period. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities. The Exchange is therefore proposing *Supplementary Material* .90 to proposed Rule 67(b)—Equities to define "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the pre-pilot measurement period, and the CADV threshold shall be applied to the duration of the pre-pilot measurement period. The pre-pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month pre-pilot period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Data Collection Security.

Implementation Date

The proposed rule change will be effective on April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[35] in general, and furthers the objectives of Section 6(b)(5) of the Act[36] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to member organizations in furtherance of compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for member organizations that operate Trading Centers will apply equally to all such member organizations, as will the data collection requirements for Market Makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

Fields, Secretary, Commission, dated November 4, 2015 (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation data of the Tick Size Pilot until six months thereafter).

[33] Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

[34] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra* note 26.

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[37] and Rule 19b–4(f)(6) thereunder.[38]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[39] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[40] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed amendments on April 4, 2016, the date upon which the data collection requirements of the Plan become effective.[41] Therefore, the Commission hereby waives the operative delay and designates the proposal operative on April 4, 2016.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–40, and should be submitted on or before April 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Robert W. Errett,

Deputy Secretary.

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[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[39] 17 CFR 240.19b–4(f)(6).

[40] 17 CFR 240.19b–4(f)(6)(iii).

[41] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

[42] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77477; File No. SR–NYSE–2016–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Rule 86 To Add Additional Order Types to the NYSE Bonds^{SM} Platform, Codify Functionality of Order Types Currently Available on NYSE Bonds, and Amend the Definition of Indicative Match Price in Current Rule 86(B)(2)(G) To Provide Greater Detail of How an IMP Is Established With Respect to Bond Auctions

March 30, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 16, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 29, 2016, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 86 to add additional order types to the NYSE Bonds^{SM} platform and to codify functionality of order types currently available on NYSE Bonds. The Exchange also proposes to amend the definition of Indicative Match Price ("IMP") in current Rule 86(b)(2)(G) to provide greater detail of how an IMP is established with respect to Bond Auctions.[5] The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange proposed changes to amend the proposed rule text of Rule 86(j)(A)(ii) in Exhibit 5 and the purpose section of each of the Form 19b–4 and Exhibit 1 to clarify the effective time used to determine the priority of Timed Orders. The Exchange also amended the purpose section of each of the Form 19b–4 and Exhibit 1 to add that all-or-none and minimum quantity contingencies are displayed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 86 to add NYSE Bonds Fill-or-Kill Order, NYSE Bonds All-or-None Order and NYSE Bonds Minimum Quantity Order as new order types to the NYSE Bonds platform, and to codify the operation of NYSE Bonds Good 'Til Date Order and NYSE Bonds Timed Order that are currently available on NYSE Bonds platform. The Exchange also proposes to amend the definition of IMP to provide greater detail of how an IMP is established with respect to Bond Auctions.

NYSE Bonds is the Exchange's electronic system for receiving, processing, executing and reporting bids, offers, and executions in bonds. Rule 86 prescribes how bonds are traded on the NYSE Bonds trading platform and sets forth available order types. NYSE Bonds currently allows Users[6] to submit limit orders[7] and reserve orders.[8] Orders are displayed, matched and executed on a price-time priority basis.[9] However, undisplayed reserve interest in NYSE Bonds always yields to displayed interest at a particular price.[10] Orders are matched and executed if marketable at the time of entry, and if not marketable at the time of entry, would post to the NYSE Bonds order book.[11] An order is marketable if contra side interest is available at that price or better price at the time the order is entered in NYSE Bonds. Further, orders that are marketable beyond the price collar established for the bond at the time of entry are rejected by NYSE Bonds to help avoid executions at erroneous prices.[12]

The Exchange believes each of the order types described below is currently offered by alternative trading systems ("ATSs") for bonds, such as Tradeweb's BondDesk Group, KCG Bondpoint, and TMC Bonds.[13]

NYSE Bonds Fill-or-Kill Order

A NYSE Bonds Fill-or-Kill Order ("NYSE Bonds FOK Order") is a NYSE Bonds Limit Order that would be executed immediately in its entirety at the best price available against a single contra party and, if not executed immediately in its entirety, would be cancelled.[14] A NYSE Bonds FOK Order would be eligible to participate in all trading sessions[15] but can be executed only during the trading session in which the order is sent; otherwise the order would be rejected. A NYSE Bonds FOK Order cannot participate in either the Opening Bond Auction or the Core Bond Auction.

The following example illustrates the proposed functionality:

Example 1—A NYSE Bonds FOK Order that gets executed when there is sufficient size and the order is at the top of the book.

- T1 submits a buy order for 200 bonds @$101
- T2 submits a sell order for 150 bonds @$102

Posted market on NYSE Bonds:
$101 − $102 (200 × 150)

- T3 enters a sell order for 50 bonds @ $101 FOK

Result: T3's 50 bonds are traded at $101 since the price is at the top of the order book and quantity is fully satisfied.

Example 2—A NYSE Bonds FOK Order that does not get executed when there is insufficient size and the order is at the top of the book.

After the trade in Example 1, posted market on NYSE Bonds:
$101 − $102 (150 × 150)

- T4 then enters a buy order for 75 bonds at $101.25

Posted market on NYSE bonds:
$101.25 − $102 (75 × 150)

- T5 enters a sell order for 100 bonds @ $101.25 FOK

Result: T5's order is cancelled because there is not enough size at the best price of 101.25.

Example 3—A NYSE Bonds FOK Order that does not get executed when interacting with a NYSE Bonds AON Order.

After T5 is cancelled in Example 2, posted market on NYSE Bonds remains at $101.25 − $102 (75 × times; 150)

- T6 enters a sell order for 100 bonds at $101.50 AON

Posted market on NYSE Bonds:
$101.25 − $101.50 (75 × 100).

- T7 enters a buy order for 75 bonds at $101.50 FOK

Result: T7's order is cancelled because the order cannot satisfy T6's AON size, which is the top of the order book.

Posted market on NYSE Bonds remains at $101.25 − $101.50 (75 × 100).

NYSE Bonds All-or-None Order

A NYSE Bonds All-or-None Order ("NYSE Bonds AON Order") is a NYSE Bonds Limit Order (whose AON contingency would be displayed on the order book) that would be executed in its entirety against one or more contra party, or not at all.[16] If a NYSE Bonds

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[5] As part of this proposal, the Exchange proposes to renumber the current rule to Rule 86(b)(2)(D).

[6] Current Rule 86(b)(2)(M) defines a User as any Member or Member Organization, Sponsored Participant, or Authorized Trader that is authorized to access NYSE Bonds. The Exchange proposes to renumber the current rule to Rule 86(b)(2)(I).

[7] A NYSE Bonds Limit Order is an order to buy or sell a stated amount of bonds at a specified price or at a better price. *See* current Rule 86(b)(2)(B). The Exchange proposes to renumber the current rule to Rule 86(b)(2)(B)(i).

[8] A NYSE Bonds Reserve Order is a NYSE Bonds Limit Order with a portion of the order's size designated for display and a portion of the order's size "reserve size" that is not to be displayed on NYSE Bonds. *See* current Rule 86(b)(2)(C). The Exchange proposes to renumber the current rule to Rule 86(b)(2)(B)(ii).

[9] *See* Rule 86(j)(A). The display and execution rules would also be applicable to the additional order types proposed herein.

[10] *See* Rule 86(j)(B).

[11] Timed Orders, as proposed herein, maybe [sic] matched and executed or posted at a time different from the time of entry. *See* Proposed Rule 86(b)(2)(B)(vi)(3)(a)–(c).

[12] *See* Rule 86(e). The price collar thresholds would also be applicable to the additional order types proposed herein.

[13] Order types such as Good 'Til Date, All-or-None, Fill-or-Kill, and Minimum Quantity are available on various equity and options markets. *See, e.g.,* NYSE Arca Equities Rule 7.31(b)(2) and International Securities Exchange ("ISE") Rule 715.

[14] A NYSE Bonds FOK Order cannot be a NYSE Bonds Reserve Order. *See* proposed Rule 86(b)(2)(B)(ii).

[15] The Opening Bond Trading Session commences with the Opening Bond Auction at 4:00 a.m. ET and concludes at 8:00 a.m. ET. *See* Rule 86(i)(1)(A). The Core Bond Trading Session commences with the Core Bond Auction at 8:00:00 a.m. ET and concludes at 5:00 p.m. ET. *See* Rule 86(i)(2)(A). The Late Bond Trading Session commences at 5:00 p.m. ET and concludes at 8:00 p.m. ET. *See* Rule 86(i)(3)(A).

[16] A NYSE Bonds AON Order cannot be a NYSE Bonds Reserve Order. *See* proposed Rule 86(b)(2)(B)(ii).

AON Order is not executed in full, NYSE Bonds would post the order to the order book at its limit price until it is executed in full, or is cancelled. Incoming contra-side orders that cannot meet the AON quantity may trade at or bypass the price of the NYSE Bonds AON Order. A NYSE Bonds AON Order would not participate in either the Opening Bond Auction or the Core Bond Auction and the order is eligible for execution only during the trading session for which it is designated.

A NYSE Bonds AON Order must be designated as "day," "good 'til cancelled," or "good 'til date." A NYSE Bonds AON Order designated as "day" can participate in all trading sessions. A NYSE bonds AON Order designated as "day," if not executed or cancelled, would expire at the end of the trading session for which it was designated, on the day on which it was entered. A NYSE Bonds AON Order designated as "day" and not designated for a particular trading session but entered during the Opening Bond Trading Session would participate in the Opening Bond Trading Session, and if not executed during the Opening Bond Trading Session or cancelled, would be eligible for execution in the Core Bond Trading Session. A NYSE Bonds AON Order designated as "day" and not designated for a particular trading session but entered during the Core Bond Trading Session would participate in the Core Bond Trading Session only and if not executed in full, the order would be cancelled at the end of such trading session.

A NYSE Bonds AON Order designated as "good 'til cancelled" may be entered during the Opening Bond Trading Session and the Core Bond Trading Session but can be executed in the Core Bond Trading Session only. A NYSE Bonds AON Order designated as "good 'til cancelled" and not designated for a particular trading session but entered during the Core Bond Trading Session would participate in the Core Bond Trading Session only and if not executed in full, the order would remain on NYSE Bonds until cancelled. Unless a NYSE Bonds AON Order that is designated as "good 'til cancelled" is executed or cancelled in full, the order would be placed on the order book for the following day in price-time priority for participation in the Core Bond Trading Session after the end of the Core Bond Auction.

A NYSE Bonds AON Order designated as "good 'til date" may be entered during the Opening Bond Trading Session and the Core Bond Trading Session but can be executed in the Core Bond Trading Session only. A NYSE Bonds AON Order designated as "good 'til date" and not designated for a particular trading session but entered during the Core Bond Trading Session would participate in the Core Bond Trading Session only and if not executed in full, would remain on NYSE Bonds until the end of the Core Bond Trading Session on the date specified. Unless a NYSE Bonds AON Order that is designated as "good 'til date" is executed or cancelled in full, the order would be placed on the order book for the following day in price-time priority for participation in the Core Bond Trading Session after the end of the Core Bond Auction.

The following examples illustrate the proposed functionality:

Example 1—A NYSE Bonds AON Order that gets executed when there is sufficient size.

Posted Market on NYSE Bonds: $102.50 – $103.50 (1000 × 1000)

- T1 enters a sell order for 500 bonds @ $102.50 AON

Result: T1's AON quantity is satisfied and the order for 500 bonds is executed at $102.50.

After the trade, posted market on NYSE Bonds: $102.50 – $103.50 (500 × 1000)

Example 2—A NYSE Bonds AON Order that does not get executed and is bypassed.

- T1 submits an order to buy 100 bonds @ $101.39
- T2 submits an order to sell 400 bonds @ $102.01

Posted Market on NYSE Bonds: $101.39 – $102.01 (100 × 400)

- T3 enters a sell order for 500 bonds @ $102 AON

Posted market on NYSE Bonds: $101.39 – $102 (100 × 500).

- T4 enters an order to buy 400 bonds @ $102.01.

Result: T4 trades 400 bonds with T2's $102.01 offer. T3's $102 AON offer with a quantity of 500 bonds would be bypassed because the specified quantity was not satisfied. T3 would remain on the Exchange's order book and continue to be displayed on the quote display feed with the AON quantity until it is either executed in full or cancelled.

Example 3—A NYSE Bonds AON Order that gets executed after aggregating liquidity to satisfy size requirement.

- T1 submits an order to buy 400 bonds @ $100
- T2 submits an order to sell 500 bonds @ $101
- T3 submits an order to sell 200 bonds @ $100.75
- T4 submits an order to sell 200 bonds @ $100.50

Posted market on NYSE Bonds: $100 – $100.50 (400 × 200)

- T5 submits an order to buy 500 bonds @ $101 AON

Result: Since there are no size restrictions on any of the orders on the book, T5 would execute against the best price available and then trade at each price level until the order is fully executed. Therefore, T5 trades 200 @ 100.50 with T4, 200 @ $100.75 with T3 and 100 @ $101 with T2.

NYSE Bonds Minimum Quantity Order

A NYSE Bonds Minimum Quantity Order is a NYSE Bonds Limit Order (whose minimum quantity contingency would be displayed on the order book) that would trade against one or more contra side order(s), provided the order's quantity requirement is met.[17] In the event there is not enough contra-side liquidity available at the time a NYSE Bonds Minimum Quantity Order is submitted, NYSE Bonds would post the order on the order book at its limit price until it is executed in full, or is cancelled. Incoming contra-side orders that cannot meet the minimum quantity may trade at or bypass the price of a NYSE Bonds Minimum Quantity Order. A NYSE Bonds Minimum Quantity Order would be rejected if the minimum quantity entered on the order is greater than the total number of bonds of the order.

A NYSE Bonds Minimum Quantity Order may be partially executed as long as each partial execution is for the minimum number of bonds or greater. If there remains a balance after one or more partial executions and such balance is for less than the minimum quantity specified on the order, such balance would be treated as a regular limit order and placed on the order book in price-time priority. A NYSE Bonds Minimum Quantity Order would not participate in either the Opening Bond Auction or the Core Bond Auction and the order would be eligible for execution only in the trading session during which it was sent.

A NYSE Bonds Minimum Quantity Order must be designated as "day," "good 'til cancelled," or "good 'til date." A NYSE Bonds Minimum Quantity Order designated as "day" is eligible to participate in all three trading sessions. A NYSE Bonds Minimum Quantity Order designated as "day," if not executed or cancelled, would expire at the end of the trading session for which it was designated, on the day on which it was entered. A NYSE Bonds Minimum Quantity Order designated as "day" and not designated for a particular trading session but entered during the Opening Bond Trading Session would participate in the Opening Bond Trading Session, and if not executed during the Opening Bond Trading Session or cancelled, would be eligible for execution in the Core Bond Trading Session. A NYSE Bonds Minimum Quantity Order designated as "day" and not designated for a particular trading session but entered during the Core Bond Trading Session would participate in the Core Bond Trading Session only and if not executed in full, the order would be cancelled at the end of such trading session.

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[17] A NYSE Bonds Minimum Quantity Order cannot be a NYSE Bonds Reserve Order. *See* proposed Rule 86(b)(2)(B)(ii).

A NYSE Bonds Minimum Quantity Order designated as "good 'til cancelled" may be entered during the Opening Bond Trading Session and the Core Bond Trading Session but would be eligible to participate in the Core Bond Trading Session only. Unless a NYSE bonds Minimum Quantity Order that is designated as "good 'til cancelled" is executed in full, or is cancelled, the order would be placed on the order book for the following day in price-time priority for participation in the Core Bond Trading Session after the end of the Core Bond Auction.

A NYSE Bonds Minimum Quantity Order designated as "good 'til date" may be entered during the Opening Bond Trading Session and the Core Bond Trading Session but would be eligible to participate in the Core Bond Trading Session only. Unless a NYSE bonds Minimum Quantity Order that is designated as "good 'til date" is executed in full, or is cancelled, the order would be placed on the order book for the following day in price-time priority for participation in the Core Bond Trading Session after the end of the Core Bond Auction.

The following examples illustrate the proposed functionality:

Example 1—A NYSE Bonds Minimum Quantity Order that gets fully executed after interacting with multiple orders including with a NYSE Bonds AON Order.

- T1 submits an order to buy 400 bonds @ $100
- T2 submits an order to sell 400 bonds @ $102

Posted market on NYSE Bonds:
$100 – $102 (400 × 400)

- T3 submits an order to sell 600 bonds @ $101 with a minimum quantity of 100 bonds
- T4 submits an order to sell 200 bonds @ $101

T3 moves ahead of T2 on the order book (and T4 moves up and is now behind T3).

Posted market on NYSE Bonds:
$100 – $101 (400 × 800).

- T5 submits an order to buy 100 bonds @ $101

Result: T5 executes with T3. T3 is decremented by 100 bonds, leaving 500 bonds that remain to be executed.

Posted market on NYSE Bonds:
$100 – $101 (400 × 700)

- T6 submits an order to buy 500 bonds @ $101 AON

Result: T6 trades 500 @$101 with T3 since T3 has 500 bonds remaining and T3's minimum quantity requirement is satisfied.

Posted market on NYSE Bonds:
$100 – $101 (400 × 200)

Example 2—A NYSE Bonds Minimum Quantity Order that does not get executed and is bypassed.

- T1 submits an order to buy 100 bonds @ $101.39
- T2 submits an order to sell 400 bonds @ $102.01

Posted market on NYSE Bonds:
$101.39 – $102.01 (100 × 400)

- T3 submits an order to sell 1000 bonds @ $102 with a minimum quantity of 500 bonds. T3 moves ahead of T2 on the order book.

Posted market on NYSE Bonds:
$101.39 – $102 (100 × 1000 (with a minimum quantity of 500))

- T4 submits an order to buy 400 bonds @ $102.01

Result: T4 trades 400 @ $102.01 with T2. T3's $102 offer has a minimum quantity of 500 and is bypassed because the minimum quantity was not satisfied.

Example 3—Multiple NYSE Bonds Minimum Quantity Orders where one order does not get executed because the order's size requirement cannot be met and the order is therefore bypassed, and another order that is partially executed and the remainder of the order is converted to a limit order.

- T1 submits an order to buy 400 bonds @ $100
- T2 submits an order to sell 400 bonds @ $102

Posted market on NYSE Bonds:
$100 – $102 (400 × 400)

- T3 submits an order to sell 600 bonds @ $101 with a minimum quantity of 300 bonds

T3 provides a better market and therefore moves ahead of T2

Posted market on NYSE Bonds:
$100 – $101 (400 × 600 (with a minimum quantity of 300))

- T4 submits an order to sell 200 bonds @ $100.75

T4 provides a better market and therefore moves ahead of T3

Posted market on NYSE Bonds"
$100 – $100.75 (400 × 200)

- T5 submits an order to sell 100 bonds @ 101

T5 moves behind T3

- T6 submits an order to buy 250 bonds @ $101 with a minimum quantity of 200 bonds

Result: T6 trades 200 with T4 @ $100.75. T6's minimum quantity is higher than the quantity remaining, so the order becomes a regular limit order to buy 50 bonds at $101. T3 does not get executed because T3's minimum quantity cannot be satisfied. T6 then trades 50 bonds @ $101 with T5 since T5 has no size restrictions.

Posted market on NYSE Bonds:
$100 – $101 (400 × 600 (with a minimum quantity of 300))

NYSE Bonds Good 'Til Date Order

A NYSE Bonds Good 'Til Date Order ("NYSE Bonds GTD Order") is a NYSE Bonds Limit Order or a NYSE Bonds Reserve Order, which if not executed or cancelled, would expire at the end of the Core Bond Trading Session on the date specified on the order. A NYSE Bonds GTD Order must include an Expire Date or be designated for the Core Bond Trading Session; otherwise, the order would be rejected. A NYSE Bonds GTD Order can participate in the Core Bond Auction and the Core Bond Trading Session only. A NYSE Bonds GTD Order would participate in the Core Bond Auction if it is entered before commencement of the Core Bond Auction, and if not executed in the Core Bond Auction, would remain live on NYSE Bonds and would be eligible for execution in the Core Bond Trading Session, unless the order is cancelled. A NYSE Bonds GTD Order entered after commencement of the Core Bond Auction would participate in the Core Bond Trading Session, unless the order is cancelled.

A NYSE Bonds GTD Order can participate only in the Core Bond Trading Session, and such order designated for any other trading session would be rejected. A NYSE Bonds GTD Order that is not executed or cancelled in full at the end of the trading day would be placed on the order book for the following day in price-time priority for participation in the Core Bond Trading Session after the end of the Core Bond Auction.

The following example illustrates how a NYSE Bonds GTD Order would be executed once it becomes effective:

Suppose on October 14, a NYSE Bonds trading day, at 7:00 a.m. (during the Early Bond Trading Session):

- T1 submits a Day order to buy 100

bonds @ $100.20

- T2 submits a Day order to sell 20 bonds @ $100.25
- T3 submits a GTD order (October 15) to buy 100 bonds @ $100.30
- T4 submits an order to sell 50 bonds @ $100.35 for participation in all three bond trading sessions

Posted market on NYSE Bonds: $100.20 × $100.25 (100 × 20)

T3's GTD order not effective yet (becomes effective at 8:00 a.m.)

On the same trading day, at 8:00 a.m., when the Core Bond Auction commences, these orders would be processed as follows:

- T3 becomes effective for the Core Bond Auction;
- T1, T2 and T3 participate in the Core Bond Auction;
- T2 and T3 overlap in price, therefore 20 Bonds are matched at $100.30 with an imbalance on the buy side of 80 bonds.

T3's GTD order becomes live for the Core Bond Trading Session.

Posted market on NYSE Bonds: $100.30 × $100.35 (80 × 50)

On the same trading day, at 8:30 a.m. (during the Core Bond Trading Session):

- T5 submits an order to sell 25 bonds @ $100.30

Result: T3 trades 25 bonds with T5.

Posted market on NYSE Bonds: $100.30 × $100.35 (55 × 50)

On the same trading day, at 5:01 p.m. (during the Late Bond Trading Session), the remaining orders would be processed as follows:

- T1 expires (as Day orders expire at the end of the Core Bond Trading Session);
- T3 is a GTD order, which trades only in the Core Bond Trading Session. Since T3 has not been executed in its entirety, the remaining portion of the order would be held and placed on the order book for the start of the Core Bond Trading Session the following day in price-time priority.
- T4 remains effective and would participate in the Late Bond Trading Session.

Posted market on NYSE Bonds: $ 0.00 × $100.35 (0 × 50)

On the next trading day, October 15, at 7:58 a.m. (during the Opening Bond Trading Session):

- T1 submits a Day order to buy 50 bonds @ $100.20
- T2 submits a Day order to sell 50 bonds @ $100.45

Posted market on NYSE Bonds: $100.20 × $100.45 (50 × 50)

Result: T3 is placed on the order book for the following day in price-time priority for participation in the Core Bond Trading Session after the end of the Core Bond Auction at 8:00 a.m.; no prices overlap, auction imbalance of 50 on buy side and 50 on sell side. T3 becomes effective.

Posted market on NYSE Bonds: $100.30 × $100.45 (55 × 50)

On the same trading day, October 15, at 5:00 p.m., when the Late Bond Trading Session commences, the remaining orders would be processed as follows:

- T1 and T2 expire (as Day orders expire at the end of the Core Bond Trading Session);
- T3 also expires (T3 was submitted with a good 'til date of 20151015 therefore, the order expires at the end of the Core Bond Trading Session on the date specified on the order).

NYSE Bonds Timed Order

A NYSE Bonds Timed Order is a NYSE Bonds Limit Order or a NYSE Bonds Reserve Order that remains in effect for a period of time specified on the order (*e.g.,* Effective Time and Expire Time) for the day on which the order is entered until the order is executed or cancelled. A NYSE Bonds Timed Order would be accepted, and may be cancelled, during all trading sessions, provided that the order is submitted during the trading session in which it is to become effective.

A NYSE Bonds Timed Order would participate in the Core Bond Auction and Core Bond Trading Session if the order is entered before commencement of the Core Bond Auction, and if the order is not executed in the Core Bond Auction, or not cancelled, it would be eligible for execution in the Core Bond Trading Session. A NYSE Bonds Timed Order must include at least one of the following: An Effective Time, an Expire Time or a designated trading session, otherwise the order would be rejected.

A NYSE Bonds Timed Order submitted with an Effective Time alone becomes effective at the Effective Time and if not executed, the order would be cancelled at the end of the Late Bond Trading Session. A NYSE Bonds Timed Order submitted with an Expire Time alone becomes effective at the time it is sent to the Exchange and if not executed, the order would be cancelled at the Expire Time designated on the order. A NYSE Bonds Timed Order submitted with a designated trading session alone or with a designated trading session and either an Effective Time or an Expire Time would become effective at the time the designated trading session begins and if not executed, the order would be cancelled at the end of the designated trading session.[18] NYSE Bonds would disregard the Effective Time or Expire Time submitted with a NYSE Bonds Timed Order that is designated for a specific trading session. Additionally, a NYSE Bonds Timed Order submitted with a time in force of Day during a trading session without an Effective Time, an Expire Time or a designated trading session would be treated as a Day limit order and, if not executed, would be cancelled at the end of the Core Bond Trading Session.

The following examples illustrate the functionality:

Example 1—A NYSE Bonds Timed Order submitted with an Effective Time that does not get executed on the day the order is submitted.

Suppose on October 14, a NYSE Bonds trading day, at 8:05 a.m. (during the Core Bond Trading Session):

- T1 submits a Day order to buy 50 bonds @ $100.25
- T2 submits a Day order to sell 50 bonds @ 100.45
- T3 submits a Timed Order to buy 100 bonds @ 100.30 with an Effective Time of 8:45 a.m.

T3 waits to become effective until 8:45 a.m.; T1 and T2 remain effective

Posted market on NYSE Bonds: $100.25 × $100.45 (50 × 50)

On the same trading day, at 8:45 a.m., T3 becomes effective. T1 and T2 remain effective

Posted market on NYSE Bonds: $100.30 × $100.45 (100 × 50)

On the same trading day, October 15, at 5:00 p.m., when the Late Bond Trading Session commences, with no executions occurring during the day, the remaining orders would be processed as follows:

- T1 and T2 expire (as Day orders expire at the end of the Core Bond Trading Session);
- T3 would also expire at the end of the Core Bond Trading Session as the order was submitted without an Expire Time.

Example 2—A NYSE Bonds Timed Order submitted with an Expire Time that does not get executed on the day the order is submitted.

Suppose on October 14, a NYSE Bonds trading day, at 8:35 a.m. (during the Core Bond Trading Session):

- T1 submits a Day order to buy 50 bonds @ $100.25
- T2 submits a Day order to sell 50 bonds @ $100.45

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[18] A NYSE Bonds Timed Order submitted during a designated trading session becomes effective at the time the order is received and, if not executed, would be cancelled at the end of such designated trading session.

- T3 submits a Timed Order to buy 100 bonds @ $100.30 with an Expire Time of 8:45 a.m.

Since T3 was submitted without an Effective Time, the order becomes effective upon order entry. T1 and T2 remain effective.

Posted market on NYSE Bonds: $100.30 × $100.45 (100 × 50)

On the same trading day, October 14, at 8:45 a.m.: T3 expires as the order was submitted with an Expire Time of 8:45 a.m. T1 and T2 remain effective during the Core Bond Trading Session

Posted market on NYSE Bonds: $100.25 × $100.45 (50 × 50)

Example 3—A NYSE Bonds Timed Order submitted with an Effective Time and an Expire Time that does not get executed on the day the order is submitted.

Suppose on October 14, a NYSE Bonds trading day, at 8:35 a.m. (during the Core Bond Trading Session):

- T1 submits a Day order to buy 50 bonds @ $100.25
- T2 submits a Day order to sell 50 bonds @ $100.45
- T3 submits a Timed Order to buy 100 bonds @ $100.30 with an Effective Time of 8:45 a.m. and an Expire Time of 8:55 a.m.

T3 waits to become effective until 8:45 a.m.; T1 and T2 remain effective

Posted market on NYSE Bonds: $100.25 × $100.45 (50 × 50)

On the same trading day, October 14, at 8:45 a.m.: T1 and T2 remain effective. T3 becomes effective

Posted market on NYSE Bonds: $100.30 × $100.45 (100 × 50)

On the same trading day, October 14, at 8:55 a.m.: T3 expires as the order was submitted with an Expire Time of 8:55 a.m. T1 and T2 remain effective during the Core Bond Trading Session.

Posted market on NYSE Bonds: $100.25 × $100.45 (50 × 50)

Indicative Match Price

Finally, the Exchange proposes to amend the definition of Indicative Match Price ("IMP") in current Rule 86(b)(2)(G) to provide greater detail of how an IMP is established with respect to Bond Auctions. Specifically, the IMP in a particular bond means a single price at which the maximum number of bonds is executable. If there are two or more prices at which the maximum number of bonds is executable, the IMP would be the price that is closest to the Reference Price provided that the IMP cannot be lower (higher) than any unmatched top of book order to buy (sell) that was eligible to participate in an auction at the IMP. For the Opening Bond Auction, the Reference Price is the closing price in a bond on the previous trading day or if the bond did not trade on the previous trading day, the closing price on the last day that the bond traded.[19] For the Core Bond Auction and the Bond Halt Auction, the Reference Price is the last price of a bond on the trading day prior to the applicable auction, and if none, the previous trading day's closing price, and if none, the closing price on the last day that the bond traded. If orders to buy and orders to sell are not marketable (*i.e.,* the price of a bond order to buy is not equal to or greater than the price of a bond order to sell), then the IMP would be determined by the side and volume at the top of book, with the price of the side with the greater volume establishing the IMP.

Current Rule 86(l)(3)(A) provides that a Bond Auction would not occur in the event of a failure to establish an IMP. The Exchange proposes to amend the current rule to provide that, for non-marketable buy and sell orders entered in NYSE Bonds where the size of the best bid and best offer are the same, an IMP would not be established and a Bond Auction would not occur.

Current Rule 86(n)(2)(E) provides that a Bond Halt Auction would not occur in the event of a failure to establish an IMP. The Exchange proposes to amend the current rule to provide that, for non-marketable buy and sell orders entered in NYSE Bonds where the size of the best bid and best offer are the same, an IMP would not be established and a Bond Halt Auction would not occur.

The following example illustrates how an IMP would be established and there is no overlapping interest for a trade to occur:

Suppose that the previous closing price of a bond is $101.50 and the order book just prior to a Bond Auction is as follows:

- T1—Buy 300 @ $101.00
- T2—Sell 200 @ $102.00
- T3—Sell 500 @ $101.75

Order	Buy volume	Sell volume	Order price	Matchable volume	Imbalance	Indicative match price
T1	300		$101.00	0	300	$101.00
T2		200	102.00	0	300	101.00
T3		500	101.75	0	500	101.75

Result: No match. The buy order (300 @ $101.00) and sell order (500 @ $101.75) do not overlap. Per proposed Rule 86(d)(ii) which states that if orders to buy and orders to sell are not marketable (*i.e.,* the price of a bond order to buy is not equal to or greater than the price of a bond order to sell), then the IMP would be determined by the side and volume at the top of book, with the price of the side with the greater volume establishing the IMP. Thus, the maximum size that could have been matched is T3, and T3 therefore establishes the IMP at $101.75.

The following example illustrates how an IMP would be established and there is overlapping interest for a trade to occur:

Suppose that the previous closing price of a bond is $101.50 and the order book just prior to a Bond Auction is as follows:

- T1—Buy 500 @ $102.00
- T2—Buy 500 @ $101.75
- T3—Sell 500 @ $101.00

Order	Buy volume	Sell volume	Order price	Matchable volume	Imbalance	Indicative match price
T1	500		$102.00	0	500	$102.00
T2	500		101.75	0	500	102.00
T3		500	101.00	500	500	101.75

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[19] The Exchange proposes to delete the words "the price that is closest to" from the current rule to more precisely reflect the price that would be used to determine the Reference Price on the last day that a bond traded.

Result: Considering there are two or more prices at which the maximum number of bonds is executable (*i.e.,* all three orders on the order book), a match can occur between $101.00 and $102.00. To establish the IMP, NYSE Bonds would select a price closest to the Reference Price (*i.e.,* previous close of $101.50) without such price being lower than the unmatched buy order price of $101.75 (T2). Therefore, the auction would occur at $101.75 with T1 and T2 participating in the auction for 500 bonds. In another words, the IMP would be established at $101.75 because that price is closest to the previous close price of $101.50 and not lower that the price of the unmatched buy order, T2.

Other Changes

In addition to adding order types to the NYSE Bonds platform and codifying functionality of order types currently available on NYSE Bonds, the Exchange also proposes to amend other parts of Rule 86 that are impacted by this proposed rule change. Rule 86(h) currently states that orders can only be designated for Bond Trading Sessions and cannot be designated for participation in Bond Auctions. The rule further states that participation in Bond Auctions is automatic if an order is designated for participation in a particular Bond trading Session and is entered prior to the commencement of the related Bond Auction . Given that not all of the new order types are eligible to participate in Bond Auctions, the Exchange proposes to amend the current rule to clarify that participation in Bond Auctions is not automatic if an order is designated for participation in a particular Bond Trading Session.

Additionally, Rule 86(j) currently states that buy and sell orders in NYSE Bonds are displayed, matched and executed according to price, with the highest bid price and the lowest offer price receiving highest priority and within each price, according to the time of order entry. For Timed Orders, priority within each price is determined based on the effective time of the order, as provided in proposed Rule 86(b)(2)(B)(vi)(3)(a)–(c). Timed Orders submitted with an Effective Time become effective at the time designated on the order. *i.e.,* at the Effective Time, whereas Timed Orders submitted with an Expire Time become effective at the time such order is submitted. Additionally, Timed Orders submitted with a designated trading session alone or with a designated trading session and either an Effective Time or an Expire Time become effective at the time the designated trading session begins, whereas Timed Orders submitted during a designated trading session become effective at the time such order is received. The Exchange proposes to reflect these difference with an amendment to Rule 86(j)(A)(ii).

Finally, the Exchange proposes to make non-substantive organizational changes to the rule text in order to make the rule easier to read and understand. Specifically, the Exchange is proposing to renumber each of paragraphs (C), (D) and (E) to (B)(ii), (B)(iii) and (B)(iv) and to renumber each of paragraphs (F) through (O) to (C) through (K).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would protect investors and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by offering Users additional order types and therefore afford them greater opportunities to execute their bond orders on the Exchange.

The proposal to adopt All-or-None, Fill-or-Kill and Minimum Quantity order types would allow Users the discretion to utilize specifically designed order execution strategies. These new order types would be substantially the same as other All-or-None, Fill-or-Kill or Minimum Quantity order types that have been available on debt and equity markets and ATSs.[22] The Exchange notes that because fixed income securities are not subject to Regulation NMS, unlike similar All-or-None and Minimum Quantity order types on equity exchanges, the Exchange proposes to display the All-or-None and Minimum Quantity and permit executions that bypass an All-or-None order or Minimum Quantity order if the terms of such orders cannot be met.

The proposed rule change to codify Good 'Til Date Orders and Timed Orders is designed to add clarity and transparency regarding current functionality without substantively modifying such functionality. Specifically, the Exchange believes that the proposed rule change will provide additional clarity and specificity regarding the functionality of NYSE Bonds and thus would promote just and equitable principles of trade and remove impediments to a free and open market. The Exchange also believes that the proposed amendments will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand and would provide Users greater flexibility in how they quote and trade bonds on the NYSE Bonds platform, while also enhancing the overall market quality for bonds traded on the Exchange.

The Exchange believes the proposed rule change would perfect the mechanism of a free and open market and a national market system by aligning the Exchange's offerings of order type functionality for bonds with those available for over-the-counter trading of bonds. The Exchange believes that the proposed rule change is not unfairly discriminatory because the new order types would be available to all Users.

The determination of the IMP is essential to executing the greatest number of bonds during a Bond Auction and the Exchange believes providing the level of detail, as proposed in the revised definition, will promote transparency and provide clarity to the rule, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed amendments to current Rules 86(h) and (j) reflect the addition of new order types and the codification of existing order types and provide clarity and transparency to Exchange rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed non-substantive organizational changes are reasonable, fair, and equitable because they are designed to make the rule easier to comprehend. The proposed amendments to Rules 86(h) and (j) and the organizational changes to Rule 86 are intended to make the rules clearer and less confusing for participants and investors and to eliminate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* supra note 13.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would contribute to competition because it would expand investor choices on NYSE Bonds and allow the Exchange to compete better with ATSs that already offer similar order types. The proposed rule change also could encourage additional bond transactions on a public exchange, which would contribute to greater price transparency.[24]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–17 and should be submitted on or before April 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07684 Filed 4–4–16; 8:45 am]

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[23] 15 U.S.C. 78f(b)(8).

[24] Bonds were traded almost exclusively via private telephone negotiations until about 10 years ago, when regulatory changes and technological advances prompted more electronic trading, which now makes up about half of U.S. government-bond trading and 20 percent of corporate, agency and municipal issues according to industry estimates. *See* "Bond 'Electronification': Catalyst Needed," (June 5, 2014), *available at http://marketsmedia.com/bond-electronification-catalyst-needed/*.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77481; File No. SR–NASDAQ–2016–013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees

March 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2016, The Nasdaq Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to require listed companies to publicly disclose compensation or other payments by third parties to any nominee for director or sitting director in connection with their candidacy for or service on the companies' Board of Directors.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Rules require listed companies to make public disclosure in several areas. For example, a listed company is required to publicly disclose material information that would reasonably be expected to affect the value of its securities or influence investors' decisions as well as when non-independent directors serve on a committee that generally requires only independent directors, such as for a controlled company or under exceptional and limited circumstances.[3] A listed company is also required to file required periodic reports with the Commission.[4] A principal purpose of these disclosure requirements is to protect investors and ensure these investors have necessary information to make informed investment and voting decisions.

In recent years, Nasdaq has observed one area where investors may not have complete information. This is when third parties compensate directors in connection with their candidacy for and/or service on company Boards of Directors. This third-party compensation, which may not be publicly disclosed, arises when a shareholder privately offers to compensate nominee directors in connection with those nominees' candidacy or service as directors. These arrangements vary but may include compensating directors based on achieving benchmarks such as an increase in share price over a fixed term.[5]

Nasdaq believes these undisclosed compensation arrangements potentially raise several concerns, including that they may lead to conflicts of interest among directors and call into question the directors' ability to satisfy their fiduciary duties. These arrangements may also tend to promote a focus on short-term results at the expense of long-term value creation. Nasdaq believes that enhancing transparency around third-party board compensation would help address these concerns and would benefit investors by making available information potentially relevant to investment and voting decisions. Nasdaq further believes that the proposed disclosure would not create meaningful burdens on directors or those making these payments nor on the companies required to make the disclosure.

Accordingly, Nasdaq is proposing to adopt Rule 5250(c) to require listed companies[6] to publicly disclose on or through the companies' Web site or proxy statement for the next annual meeting at which directors are elected (or, if they do not file proxy statements, in Form 10–K or Form 20–F),[7] all agreements and arrangements between any director or nominee and any person or entity (other than the company) that provide for compensation or other payment in connection with that person's candidacy or service as a director.[8]

A listed company's obligation under the proposed rule to publicly disclose such arrangements is continuous and will terminate at the earlier of the resignation of the director subject to the arrangement or one year following the termination of the arrangement. The proposed rule is intended to be construed broadly and apply to both compensation and other forms of payment such as health insurance premiums that are made in connection with a person's candidacy or service as a director. Further, at a minimum, the disclosure should identify the parties to and the material terms of the agreement or arrangement. To allow listed companies affected by the proposed rule a transition period, the rule will be effective on June 30, 2016.[9]

In recognition of circumstances that do not raise the concerns noted above or where such disclosure may be duplicative, the proposed rule would not apply to agreements and arrangements that existed before the nominee's candidacy and have been otherwise publicly disclosed, for example, pursuant to Items 402(a)(2) or 402(k) of Regulation S–K or in a director's biographical summary included in periodic reports filed with the Commission. An example of an agreement or arrangement falling under this exception is a director or a nominee for director being employed by a private equity fund where employees are expected to and routinely serve on the boards of the fund's portfolio companies and their remuneration is not materially affected by such service. If such a director or a nominee's remuneration is materially increased in connection with such person's candidacy or service as a director of the company, only the difference between the new and the previous level of compensation needs to be disclosed under the proposed rule.

Additionally, the proposed rule would not apply to agreements and arrangements that relate only to reimbursement of expenses incurred in connection with candidacy as a director, whether or not such reimbursement arrangement has been publicly disclosed. Finally, Commission Rule 14a–12(c) subjects persons soliciting proxies in opposition to companies' proxy solicitation to certain disclosure requirements of Schedule 14A of the Act. The proposed rule relieves the company from the initial disclosure requirements of the proposed rule where an agreement or arrangement for a director or a nominee has been disclosed under Item 5(b) of Schedule 14A of the Act. However, such an agreement or arrangement is subject to the continuous disclosure requirements of the proposed rule on an annual basis.

Further, in recognition that a company, despite reasonable efforts, may not be able to identify all such agreements and arrangements, the proposed rule provides that a company shall not be deficient with the proposed requirement if it has undertaken reasonable efforts to identify all such agreements and arrangements, including by asking each director or nominee in a manner designed to allow timely disclosure, and upon discovery of a non-disclosed arrangement, promptly makes the required disclosure by filing a Form 8–K or 6–K, where required by Commission rules, or by issuing a press release.

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[3] *See* Rules 5250(b)(1), 5615(c)(2), 5605(c)(2)(B), 5605(d)(2)(B) and 5605(e)(3).

[4] *See* Rule 5250(c).

[5] The Commission notes that various provisions of the federal securities laws already require the disclosure of compensation arrangements between third parties and directors or director nominees. *See, e.g.,* Items 401(a) and 402(a)(2) of Regulation S–K; Item 5(b) of Schedule 14A; and Item 5.02(d) of Form 8–K.

[6] Pursuant to Listing Rule 5615(a)(3), a foreign private issuer may follow home country practice in lieu of the requirements of the proposed rule.

[7] This disclosure method is consistent with the method under Listing Rule 5605(d)(2)(B) for disclosure of the appointment of a non-independent compensation committee member under exceptional and limited circumstances. A Company that provides disclosure under Commission rules—including the requirement in Item 5.02(d)(2) of Form 8–K to provide "a brief description of any arrangement or understanding between the new director and any other persons, naming such persons, pursuant to which such director was selected as a director"—would not have to make separate disclosure under the proposed rule if the disclosure identifies the material terms of the agreement or arrangement and the Commission disclosure document (*i.e.,* Form 8–K) is posted on the company's Web site. However, such an agreement or arrangement is subject to the continuous disclosure requirements of the proposed rule on an annual basis.

[8] The proposal is intended to apply to agreements and arrangements whether or not the right to nominate a director legally belongs to the third party. *See* IM 5605–7 (Independent Director Oversight of Director Nominations).

[9] The Commission notes that the proposed effective date of June 30, 2016 is contingent on Commission approval of the rule proposal under Section 19(b) of the Act by that date.

In cases where a company is considered deficient, the company must provide a plan to regain compliance. Consistent with deficiencies from most other rules that allow a company to submit a plan to regain compliance,[10] Nasdaq proposes to allow companies deficient under the proposed rule 45 calendar days to submit a plan sufficient to satisfy Nasdaq staff that the company has adopted processes and procedures designed to identify and disclose relevant agreements and arrangements in the future. If the company does not do so, it would be issued a Staff Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal accomplishes these objectives by enhancing transparency around third party compensation and payments made in connection with board service. The Exchange believes such disclosure has several benefits: It would provide information to investors to help them make meaningful investing and voting decisions. It would also address potential concerns that undisclosed third party compensation arrangements may lead to conflicts of interest among directors and call into question their ability to satisfy fiduciary duties.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule to require listed companies to disclose third party compensation and payments in connection with board service is intended to provide meaningful information to investors and to address potential concerns with undisclosed compensation schemes without creating unnecessary burdens on directors or those making the payments.

Further, the proposed rule change is intended to promote transparency and protect investors and is not being adopted for competitive purposes. To the extent a competitor marketplace believes that the proposed rule change places them at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–013 and should be submitted on or before April 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07688 Filed 4–4–16; 8:45 am]

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[10] Pursuant to Rule 5810(c)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 5620(c) (Quorum), 5630 (Review of Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), and 5640 (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 5250(c)(1).

[11] Separate from this proposed rule change, Nasdaq is surveying interested parties as to whether Nasdaq should propose additional requirements surrounding directors and candidates that receive third party payments, including whether such directors should be prohibited from being considered independent under Nasdaq rules or prohibited from serving on the board altogether. Nasdaq has made no decision about whether to propose additional rules. If Nasdaq does determine to propose additional rules, any proposal would be subject to a separate rule filing. Listing Rule 5605(a)(2) excludes from the definition of Independent Director any "individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director."

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–32062; File No. 812–14511]

FactorShares Trust, et al.; Notice of Application

March 30, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

APPLICANTS: FactorShares Trust (the "Trust"), Factor Advisors, LLC and ETF Managers Group LLC (together, the "Initial Advisers"), and ALPS Distributors, Inc. (the "Distributor").

FILING DATES: The application was filed on July 2, 2015, and amended on December 22, 2015 and March 22, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 25, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: The Trust and the Initial Advisers, 35 Beechwood Road, Suite 2B, Summit, New Jersey 07901; The Distributor, 1290 Broadway, Suite 1100, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Miller, Senior Counsel at (202) 551–8707, or Holly L. Hunter-Ceci, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. FactorShares Trust is organized as a Delaware statutory trust. The Trust is registered under the Act as an open-end management investment company.

2. The Initial Advisers are registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and will be the investment adviser to the Trust's existing funds that operate as index-based exchange-traded funds (the "Current Funds") and the Funds (defined below). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. Each Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds, or their respective Master Funds, (each, a "Sub-Adviser"). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust has entered into a distribution agreement with the Distributor. The distributor for the Current Funds is and will be the Distributor. The Distributor is a broker-dealer ("Broker") registered under the Securities Exchange Act of 1934 (the "Exchange Act") and will act as distributor and principal underwriter of one or more of the Funds. The distributor of any one Fund may be an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of that Fund's Adviser and/or Sub-Advisers. No distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the Current Funds and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future that operate as an exchanged-traded fund ("ETF") and that track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index") (together, the "Future Funds"). Any Future Fund will (a) be advised by the Initial Advisers or an entity controlling, controlled by, or under common control with the Initial Advisers (each, an "Adviser") and (b) comply with the terms and conditions of the application. The Current Funds and Future Funds, together, are the "Funds."[1]

5. Applicants state that a Fund may operate as a feeder fund in a master-feeder structure ("Feeder Fund"). Applicants request that the order permit a Feeder Fund to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) of the Act and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act ("Master-Feeder Relief"). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.[2] There

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[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company. The application seeks an order to supersede a prior order issued to the applicants. All of the applicants that currently rely on the prior have been named as applicants, and applicants will not continue to rely on the prior order if the requested order is issued.

[2] Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund's Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a

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would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Each Fund, or its respective Master Fund, will hold certain securities, currencies, other assets and other investment positions ("Portfolio Holdings") selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes that will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities ("Foreign Funds").

7. Applicants represent that each Fund, or its respective Master Fund, will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index ("Component Securities") and TBA Transactions,[3] and in the case of Foreign Funds, Component Securities and Depositary Receipts[4] representing Component Securities.[5] Each Fund, or its respective Master Fund, may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the applicable Adviser believes will help the Fund, or its respective Master Fund, track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

8. Future Funds may seek to track Underlying Indexes constructed using 130/30 investment strategies ("130/30 Funds") or other long/short investment strategies ("Long/Short Funds"). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[6] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, the applicable Adviser for each Self-Indexing, Long/Short Fund and 130/30 Fund will provide full portfolio transparency on the Fund's publicly available Web site ("Web site") by making available the Self-Indexing, Long/Short Fund or 130/30 Fund's, or its respective Master Fund's, Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[7] The information provided on the Web site will be formatted to be reader-friendly.

9. A Fund, or its respective Master Fund, will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund, or its respective Master Fund, using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund, or its respective Master Fund, using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund, or its respective Master Fund, using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that the returns of each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

10. Each Fund is or will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains an Underlying Index (each, an "Index Provider") or a sub-licensing arrangement with the applicable Adviser, which will have a licensing agreement with such Index Provider.[8] A "Self-Indexing Fund" is a Fund for which an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Advisers, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an "Affiliated Index Provider") will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an "Affiliated Index").[9] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of an Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

11. Applicants recognize that Self-Indexing Funds could raise concerns regarding the potential ability of the Affiliated Index Provider to manipulate

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master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest its portfolio in compliance with the requested order.

[3] A "to-be-announced transaction" or "TBA Transaction" is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[4] Depositary receipts representing foreign securities ("Depositary Receipts") include American Depositary Receipts and Global Depositary Receipts. The Funds, or their respective Master Funds, may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a "depositary bank") and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund, or its respective Master Fund, will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund, or its respective Master Fund.

[5] With respect to a Fund, or its respective Master Fund, that invests in a Wholly-Owned Subsidiary (defined below), the Fund, or its respective Master Fund, will look through the Wholly-Owned Subsidiary to determine whether certain assets fall within the 20% Asset Basket (as defined below).

[6] Underlying Indexes that include both long and short positions in securities are referred to as "Long/Short Indexes."

[7] Under accounting procedures followed by each Fund, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day. This disclosure will look through any Wholly-Owned Subsidiary (defined below) and identify the specific Portfolio Holdings held by that entity.

[8] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[9] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be "investment companies" in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser ("Affiliated Accounts") as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser ("Unaffiliated Accounts"). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

12. Applicants propose that each day that a Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an "Exchange") on which the Fund's Shares are primarily listed ("Listing Exchange") are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a "Business Day"), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an additional alternative mechanism for addressing any such potential conflicts of interest.

13. Applicants do not believe the potential for conflicts of interest raised by an Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds, and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[10]

14. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds, their respective Master Funds, and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Initial Advisers have adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person ("Inside Information Policy"). Any other Adviser and/or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics[11] and Inside Information Policy of each Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit[12] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. Each Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

15. To the extent the Self-Indexing Funds or their respective Master Funds transact with an Affiliated Person of an Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees ("Board") will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, an Adviser, Affiliated Persons of the Adviser ("Adviser Affiliates") and Affiliated Persons of any Sub-Adviser ("Sub-Adviser Affiliates") may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by an Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

16. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").[13] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[14] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[15] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[16] will be excluded from the Deposit Instruments and the Redemption Instruments;[17] (d)

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[10] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[11] Each Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 ("Code of Ethics").

[12] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the "Portfolio Deposit."

[13] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[14] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[15] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[16] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[17] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the

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to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[18] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a "Rebalancing"). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

17. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[19] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[20]

18. Creation Units will consist of specified large aggregations of Shares, *e.g.,* at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an "Authorized Participant" which is either (1) a "Participating Party," *i.e.,* a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company ("DTC") ("DTC Participant"), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

19. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

20. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees ("Transaction Fees") in connection with effecting such purchases or redemptions of Creation Units. In a master-feeder structure, the Transaction Fee would be paid indirectly to the Master Fund.[21] In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[22] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

21. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a "Market Maker") and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current

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determination of the Cash Amount (as defined below).

[18] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants (as defined below) on a given Business Day.

[19] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[20] A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[21] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[22] Where a Fund permits an "in-kind" purchaser to substitute cash in lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

22. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[23] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

23. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. A redeeming investor will pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

24. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a "mutual fund." Instead, each such Fund will be marketed as an "ETF." All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.[24] Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem

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[23] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

[24] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for the underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.[25] Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen (15) calendar days following the tender of Creation Units for redemption.[26]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds, or their respective Master Funds, that do not effect creations and redemptions of Creation Units in-kind.[27]

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts ("UITs") that are not advised or sponsored by the Advisers and are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as "Investing Management Companies," such UITs are referred to as "Investing Trusts," and Investing Management Companies and Investing Trusts are collectively referred to as "Funds of Funds"), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Fund of Funds Adviser") and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a "Fund of Funds Sub-Adviser"). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor ("Sponsor").

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[28] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor ("Fund of Funds' Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser ("Fund of Funds' Sub-Advisory Group").

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board,

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[25] Certain countries in which a Fund may invest have historically had settlement periods of up to fifteen (15) calendar days.

[26] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[27] In addition, the requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

[28] A "Fund of Funds Affiliate" is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A "Fund Affiliate" is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[29]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund, nor its respective Master Fund, will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, other than a Wholly-Owned Subsidiary,[30] and except to the extent permitted by exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of section 12(d)(1)(A) and (B) shall not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held by the investing investment company (in this case, the Feeder Fund). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from section 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

20. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by an Adviser or an entity controlling, controlled by or under common control with an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an "Affiliated Fund"). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

21. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an

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[29] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[30] A Fund, or its respective Master Fund, may invest in a wholly-owned subsidiary, organized under the laws of the Cayman Islands as an exempted company or under the laws of another non-U.S. jurisdiction (a "Wholly-Owned Subsidiary"), in order to pursue its investment objectives and/or ensure that the Fund remains qualified as a RIC for U.S. federal income tax purposes. Certain Wholly-Owned Subsidiaries may be investment companies or excluded from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act. For a Fund, or its respective Master Fund, that invests in a Wholly-Owned Subsidiary, the Adviser will serve as investment adviser to both the Fund, or its respective Master Fund, and the Wholly-Owned Subsidiary.

affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions "in-kind."

22. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making "in-kind" purchases or "in-kind" redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for "in-kind" purchases of Creation Units and the redemption procedures for "in-kind" redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that "in-kind" purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that "in-kind" purchases and redemptions will be made on terms reasonable to applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating "in-kind" purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating "in-kind" redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions "in-kind" will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

23. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[31] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[32] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve "overreaching" by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund and will be consistent with the investment objectives and policies of each Fund of Funds, and the proposed transactions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief, other than the section 12(d)(1) Relief and the section 17 relief related to a master-feeder structure, will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. Each Fund's Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for the Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

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[31] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[32] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

5. Each Self-Indexing, Long/Short and 130/30 Fund will post on its Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's, or its respective Master Fund's, Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund, or its respective Master Fund, through a transaction in which the Self-Indexing Fund, or its respective Master Fund, could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund, or its respective Master Fund, for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund, or its respective Master Fund, or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund, or its respective Master Fund, or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, or its respective Master Fund, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("non-interested Board members"), will determine that any consideration paid by the Fund, or its respective Master Fund, to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund, or its respective Master Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund, or its respective Master Fund, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b–1 under the Act) received from a Fund, or its respective Master Fund, by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund, or its respective Master Fund, by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund, or its respective Master Fund, to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, or its respective Master Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund, or its respective Master Fund, in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund, or its respective Master Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund, or its respective Master Fund, in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund, or its respective Master Fund, will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and

preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund, or its respective Master Fund, will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent (i) the Fund, or its respective Master Fund, acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to acquire securities of one or more investment companies for short-term cash management purposes, (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief or (iii) the Fund invests in a Wholly-Owned Subsidiary that is a wholly-owned and controlled subsidiary of the Fund (or its respective Master Fund) as described in the Application. Further, no Wholly-Owned Subsidiary will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than money market funds that comply with rule 2a–7 for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07704 Filed 4–4–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77480; File No. SR–BATS–2016–03]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, To List and Trade Shares of the Elkhorn Dow Jones RAFI Commodity ETF of Elkhorn ETF Trust

March 30, 2016.

I. Introduction

On February 1, 2016, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Elkhorn Dow Jones RAFI Commodity ETF ("Fund"). On February 3, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on February 16, 2016.[3] On March 22, 2016, the Exchange filed and subsequently withdrew Amendment No. 2 to the proposed rule change and filed Amendment No. 3 to the proposed rule change.[4] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1 and 3 thereto.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund pursuant to BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[5] The Shares will be offered by the Elkhorn ETF Trust ("Trust"), which was established as a Massachusetts business trust on December 12, 2013.[6] Elkhorn Investments, LLC will be the investment adviser ("Adviser") to the Fund. It is currently anticipated that day-to-day portfolio management for the Fund will be provided by the Adviser. However, the Fund and the Adviser may contract with an investment sub-adviser ("Sub-Adviser") to provide day-to-day portfolio management for the Fund. ALPS Distributors, Inc. will be the principal underwriter and distributor of the Fund's Shares. The Fund will contract with unaffiliated third parties to provide administrative, custodial and transfer agency services to the Fund. The Exchange represents the Adviser is not a broker-dealer, but is affiliated with a broker-dealer, and it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, or changes to, the Fund's portfolio.[7]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77086 (Feb. 9, 2016), 81 FR 7857 ("Notice").

[4] In Amendment No. 3 to the proposed rule change, the Exchange clarified that: (a) All statements and representations made in the proposal shall constitute continued listing requirements for listing the Shares on the Exchange; (b) the issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements; (c) pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements; and (d) if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. Because Amendment No. 3 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment (Amendment No. 3 to the proposed rule change is available at: *http://www.sec.gov/comments/sr-bats-2016-03/bats201603-1.pdf*).

[5] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[6] The Exchange represents that the Trust is registered under the Investment Company Act of 1940 ("1940 Act"). *See* Registration Statement on Form N–1A for the Trust, dated November 10, 2015 (File Nos. 333–201473 and 811–22926) ("Registration Statement"). The Exchange further states that the Trust has obtained certain exemptive relief under the 1940 Act.

A. Exchange's Description of the Fund's Investments[8]

According to the Exchange, the Fund's investment objective will be to provide total return which exceeds that of the Dow Jones RAFI Commodity Index ("Benchmark")[9] consistent with prudent investment management.[10] The Fund will seek excess return above the Benchmark through the active management of a short duration portfolio of highly liquid, high quality bonds.

The Fund will be an actively managed fund that seeks to achieve its investment objective by investing, under normal market conditions,[11] in exchange-traded commodity futures contracts, centrally cleared and non-centrally cleared swaps,[12] exchange-traded options on futures contracts, and exchange-traded commodity-linked instruments[13] (collectively, "Commodities") through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands ("Subsidiary"), thereby obtaining exposure to the commodities markets.

The Fund's Commodities investments, in part, will be comprised of exchange-traded futures contracts on commodities that comprise the Benchmark. Although the Fund, through the Subsidiary, will generally hold many of the futures contracts included in the Benchmark, the Fund and the Subsidiary will be actively managed and will not be obligated to invest in all of (or to limit investments solely to) such futures contracts. In addition, with respect to investments in exchange-traded futures contracts, the Fund and the Subsidiary will not be obligated to invest in the same amount or proportion as the Benchmark, or be obligated to track the performance of the Benchmark. In addition to exchange-traded futures contracts, the Fund's Commodities investments will also be comprised of the following: Centrally cleared and non-centrally cleared swaps on commodities; exchange-traded options on futures contracts that provide exposure to the investment returns of the commodities markets; and exchange-traded commodity-linked instruments, without investing directly in physical commodities.

The Fund will invest in Commodities through investments in the Subsidiary and will not invest directly in physical commodities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. In addition to Commodities, the Fund's assets will be invested in: (1) Short-term, investment grade fixed income securities, including only the following instruments: U.S. government and agency securities,[14] corporate debt obligations,[15] and repurchase agreements;[16] (2) money market instruments;[17] (3) investment companies (other than those that are commodity-linked instruments),[18] including both exchange traded and non-exchange-traded investment companies, that provide exposure to commodities, equity securities, and fixed income securities to the extent permitted under the 1940 Act and any applicable exemptive relief;[19] (4) certain bank instruments;[20] and (5) cash and other cash equivalents (collectively, "Other Investments"). The Fund will use the Other Investments as investments, to provide liquidity, and to collateralize the Subsidiary's commodity exposure on a day-to-day basis.

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[7] *See* BATS Rule 14.11(i)(7). The Exchange further represents that, in the event that (a) the Adviser or a Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of, or changes to, the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[8] The Commission notes that additional information regarding the Fund, the Trust, the Subsidiary (as defined herein), and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[9] The Benchmark is developed, maintained, and sponsored by S&P Dow Jones Indices LLC ("S&P Indices").

[10] According to the Exchange, the Benchmark currently contains 24 commodities across three major sectors including energy, agriculture and livestock, and metals. *See* Notice, *supra* note 3 (providing additional information regarding the Benchmark and its components, including a table describing each of the commodities underlying the futures contracts included in the Benchmark as of October 31, 2015, and each instrument's trading hours, exchange, and ticker symbol).

[11] The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets, futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[12] Investments in non-centrally cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets. When investing in non-centrally cleared swaps, the Subsidiary will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or a Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's and/or a Sub-Adviser's analysis will evaluate each approved counterparty using various methods of analysis and may consider such factors as the counterparty's liquidity, its reputation, the Adviser's and/or a Sub-Adviser's past experience with the counterparty, its known disciplinary history and its share of market participation.

[13] Exchange-traded commodity-linked instruments include only the following: (1) Funds that provide exposure to commodities as would be listed under Exchange Rules 14.11(b), (c), and (i); and (2) pooled investment vehicles that invest primarily in commodities and commodity-linked instruments as would be listed under Exchange Rules 14.11(d) and 14.11(e)(2), (4), (6), (7), (8), (9), and (10).

[14] Such securities are securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the "full faith and credit" of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[15] At least 75% of corporate debt obligations will have a minimum principal amount outstanding of $100 million or more.

[16] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser and/or a Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Trust's Board of Trustees ("Board"). The Adviser and/or a Sub-Adviser will review and monitor the creditworthiness of such institutions. The Adviser and/or a Sub-Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[17] For the Fund's purposes, money market instruments will include only the following instruments: Short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a–7 under the 1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. In addition, the Fund may invest in commercial paper (short-term unsecured promissory notes), but only if the commercial paper has received the highest rating from at least one nationally recognized statistical rating organization or, if unrated, has been judged by the Adviser and/or a Sub-Adviser to be of comparable quality.

[18] According to the Exchange, the Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order obtained by the Trust and the Adviser from the Commission. The exchange-traded investment companies in which the Fund may invest include Index Fund Shares (as described in Rule 14.11(c)), Portfolio Depository Receipts (as described in Rule 14.11(b)), and Managed Fund Shares (as described in Rule 14.11(i)). The non-exchange-traded investment companies in which the Fund may invest include all non-exchange-traded investment companies that are not money market mutual funds, as described above. While the Fund and the Subsidiary may invest in inverse commodity-linked instruments and securities of investment companies, the Fund and the Subsidiary will not invest in leveraged or inverse leveraged (*e.g.*, 2X or –3X) commodity-linked instruments or securities of investment companies.

The Fund's investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies. The Fund intends to qualify for, and to elect to be treated as, a separate regulated investment company under Subchapter M of the Internal Revenue Code.

B. Exchange's Description of the Subsidiary's Investments

The Subsidiary will generally seek to make investments in Commodities, and its portfolio will be managed by the Adviser or a Sub-Adviser.[21] The Adviser or a Sub-Adviser will use its discretion to determine the percentage of the Fund's assets allocated to the Commodities held by the Subsidiary that will be invested in exchange-traded commodity futures contracts, centrally cleared and non-centrally cleared swaps, exchange-traded options on futures contracts, and exchange-traded commodity-linked instruments. In this regard, under normal market conditions, the Subsidiary is expected, as a general matter, to invest in futures contracts in proportional weights and allocations that are similar to the Benchmark, as well as in the other Commodities. Additionally, the Subsidiary, like the Fund, may invest in Other Investments (*e.g.,* as investments, to serve as margin or collateral, or to otherwise support the Subsidiary's positions in Commodities).

The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in the derivative instruments. The Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Commodities. The Subsidiary's investments will provide the Fund with exposure to domestic and international markets.

C. Exchange's Description of Commodities Regulation

The Commodity Futures Trading Commission ("CFTC") has adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator. As a result of the instruments that will be indirectly held by the Fund, the Adviser will register as a commodity pool operator and will also become a member of the National Futures Association ("NFA"). Any Sub-Adviser will register as a commodity pool operator or commodity trading adviser, as required by CFTC regulations. The Fund and the Subsidiary will be subject to regulation by the CFTC and NFA and additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

D. Exchange's Description of the Fund's Investment Restrictions

While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and −3X) of the Benchmark. In addition, the Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.

The Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary). The Fund will not purchase securities of open-end or closed-end investment companies, except in compliance with the 1940 Act or any applicable exemptive relief. In addition, the Exchange represents that, with respect to the futures contracts and exchange-traded options on futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures and options contracts) of the futures and options contracts held by the Subsidiary, in the aggregate, shall consist of instruments whose principal trading market is a market from which the Exchange may not obtain information regarding trading in the futures contracts and exchange-traded options on futures contracts by virtue of: (a) Its membership in the Intermarket Surveillance Group ("ISG"); or (b) a comprehensive surveillance sharing agreement.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser.[22] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets, as determined in accordance with Commission staff guidance.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[23] and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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[19] The exchange-traded investment companies and commodity-linked instruments in which the Fund invests will be listed and traded in the U.S. on registered exchanges.

[20] The term "certain bank instruments" includes only the following instruments: Certificates of deposit issued against funds deposited in a bank or savings and loan association; bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; and bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest.

[21] The Exchange states that the Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary will be wholly-owned and controlled by the Fund. Therefore, the Fund's ownership and control of the Subsidiary will prevent the Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

[22] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[23] 15 U.S.C. 78f.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[26] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available on the facilities of the Consolidated Tape Association ("CTA"). An estimated value, defined in BATS Rule 14.11(i)(3)(C) as the Intraday Indicative Value ("IIV"), that reflects an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio), will be disseminated. The IIV will be based upon the current value for the components of the Disclosed Portfolio (as defined below) and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Exchange's Regular Trading Hours.[27] On each business day, before commencement of trading in Shares during Regular Trading Hours,[28] the Fund will disclose on its Web site the identities and quantities of the portfolio of securities, Commodities, and other assets ("Disclosed Portfolio" as defined in Rule 14.11(i)(3)(B)) held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[29] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern Time.[30] Additionally, information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will also be published daily in the financial section of newspapers. Intra-day executable price quotations on the securities and other assets held by the Fund and the Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information on the securities and other assets held by the Fund and the Subsidiary will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.[31] Daily trading volume information for the Fund will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Information relating to the Benchmark, including its constituents, weightings, and changes to its constituents, will be available on the Web site of S&P Indices.

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[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[27] According to the Exchange, several major market data vendors display and/or make widely available Intraday Indicative Values published via the CTA or other data feeds.

[28] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[29] According to the Exchange, the Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Disclosed Portfolio displayed on the Fund's Web site will include the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap), the identity of the security, commodity, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site and information will be publicly available at no charge.

[30] In determining the value of the assets held by the Fund and the Subsidiary, the Fund's and the Subsidiary's investments will be generally valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer), or (iii) based on amortized cost. The Fund and the Subsidiary may use various pricing services or discontinue the use of any pricing service. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. If available, debt securities and money market instruments with maturities of more than 60 days will typically be priced based on valuations provided by independent, third party pricing agents. Such values will generally reflect the last reported sales price if the security is actively traded. The third party pricing agents may also value debt securities at an evaluated bid price by employing methodologies that utilize actual market transactions, broker supplied valuations, or other methodologies designed to identify the market value for such securities. Debt obligations with remaining maturities of 60 days or less may be valued on the basis of amortized cost, which approximates market value. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing, as described below. Futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded. Exchange-traded options will be valued at the closing price in the market where such contracts are principally traded. Swaps will be valued based on valuations provided by independent, third-party pricing agents. Securities of non-exchange-traded investment companies will be valued at NAV. Equity securities listed on a securities exchange (including exchange-traded commodity linked instruments and exchange-traded investment companies), market or automated quotation system for which quotations are readily available (except for securities traded on The NASDAQ Stock Market LLC ("NASDAQ") and the London Stock Exchange Alternative Investment Market ("LSE AIM")) will be valued at the last reported sale price on the primary exchange or market on which they are traded on the valuation date (or at approximately 4:00 p.m. Eastern Time if a security's primary exchange is normally open at that time). For a security that trades on multiple exchanges, the primary exchange will generally be considered to be the exchange on which the security generally has the highest volume of trading activity. If it is not possible to determine the last reported sale price on the relevant exchange or market on the valuation date, the value of the security will be taken to be the most recent mean between the bid and asked prices on such exchange or market on the valuation date. Absent both bid and asked prices on such exchange, the bid price may be used. For securities traded on NASDAQ or LSE AIM, the official closing price will be used. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing, as described below. The prices for foreign instruments will be reported in local currency and converted to U.S. dollars using currency exchange rates. Exchange rates will be provided daily by recognized independent pricing agents. In the event that current market valuations are not readily available or such valuations do not reflect current market values, the affected investments will be valued using fair value pricing pursuant to the pricing policy and procedures approved by the Board in accordance with the 1940 Act. Fair value pricing may require subjective determinations about the value of an asset and may result in prices that differ from the value that would be realized if the asset was sold.

[31] More specifically, the Exchange represents that pricing information for exchange-traded commodity futures contracts, exchange-traded options on futures contracts, exchange-traded commodity-linked instruments, exchange-traded investment companies other than exchange-traded commodity-linked instruments will be available on the exchanges on which they are traded and through subscription services. Pricing information for securities of non-exchange-traded investment companies will be available through the applicable fund's Web site or major market data vendors. Pricing information for swaps, fixed income securities, and money market instruments will be available through subscription services, broker-dealer firms, and/or pricing services. Additionally, the Trade Reporting and Compliance Engine ("TRACE") of the Financial Industry Regulatory Authority ("FINRA") will be a source of price information for certain fixed income securities held by the Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[32] Trading in the Shares also will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted.[33] The Exchange may halt trading in the Shares if trading is not occurring in the securities, Commodities, or other assets constituting the Disclosed Portfolio of the Fund and the Subsidiary, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[34] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[35] The Exchange states that it prohibits the distribution of material, non-public information by its employees. The Exchange also represents that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to that broker-dealer affiliate regarding access to information concerning the composition of, or changes to, the Fund's portfolio.[36] Moreover, the Exchange represents that it may obtain information regarding trading in the Shares and the underlying shares in exchange-traded investment companies, commodity-linked instruments, futures, and options on futures via ISG, from other exchanges who are members or affiliates of ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares.

(4) The Exchange will communicate as needed regarding trading in the Shares and in the exchange-traded Commodities and exchange-traded investment companies not included within the definition of Commodities (together, "Exchange Traded Instruments") held by the Fund and the Subsidiary with other markets and other entities that are members of ISG and may obtain trading information regarding trading in the Shares and in the Exchange Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Exchange Traded Instruments held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

(5) With respect to the futures contracts and exchange-traded options on futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures and options contracts) of the futures and options contracts held by the Subsidiary, in the aggregate, shall consist of instruments whose principal trading market is a market from which the Exchange may not obtain information regarding trading in the futures contracts and exchange-traded options on futures contracts by virtue of: (a) Its membership in ISG; or (b) a comprehensive surveillance sharing agreement.

(6) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular ("Circular") of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the IIV and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening[37] and After Hours Trading Sessions[38] when an

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[32] *See* BATS Rule 14.11(i)(4)(A)(ii).

[33] *See* BATS Rule 14.11(i)(4)(B)(iv).

[34] *See* BATS Rule 14.11(i)(4)(B)(iii) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[35] *See* BATS Rule 14.11(i)(4)(B)(ii)(B).

[36] *See supra* note 7 and accompanying text. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and any Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[37] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[38] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

updated IIV will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(7) For initial and continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A–3 under the Act.[39]

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser under the 1940 Act.

(9) The Fund will invest in Commodities through investments in the Subsidiary and will not invest directly in physical commodities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary).

(10) Investments in non-centrally cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets.

(11) At least 75% of corporate debt obligations will have a minimum principal amount outstanding of $100 million or more. In addition, the exchange-traded investment companies and commodity-linked instruments in which the Fund invests will be listed and traded in the U.S. on registered exchanges.

(12) While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and –3X) of the Benchmark.

(13) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice. The Commission notes that the Fund and the Shares must comply with the requirements of BATS Rule 14.11(i), including those set forth in this proposed rule change, to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 3 thereto, is consistent with Section 6(b)(5) of the Act[40] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–BATS–2016–03), as modified by Amendment Nos. 1 and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07687 Filed 4–4–16; 8:45 am]

BILLING CODE 8011–01–P

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[39] *See* 17 CFR 240.10A–3.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77474; File No. TP 16–7]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to J.P. Morgan Exchange-Traded Fund Trust, JPMorgan Diversified Return International Currency Hedged ETF, and JPMorgan Diversified Return Europe Currency Hedged ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

March 30, 2016.

By letter dated March 30, 2016 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for J.P. Morgan Exchange-Traded Fund Trust (the "Trust"), on behalf of the Trust, the JPMorgan Diversified Return International Currency Hedged ETF and the JPMorgan Diversified Return Europe Currency Hedged ETF (each, a "Fund" and collectively the "Funds"), any national securities exchange on or through which shares issued by the Funds ("Shares") may subsequently trade, SEI Investments Distribution Co. (the "Distributor"), and persons or entities engaging in transactions in Shares (collectively, the "Requestors"), requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares ("Creation Units").

The Trust is registered with the Securities and Exchange Commission ("Commission") under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. The JPMorgan Diversified Return International Currency Hedged ETF will seek to provide investment results that closely correspond, before fees and expenses, to the performance of the FTSE Developed ex North America Diversified Factor 100% Hedged to USD Index (the "JPIH Index"), which consists of (a) the equity securities included in the FTSE Developed ex North America Diversified Factor Index (the "JPIH Underlying Index"), and (b) a currency hedging component (reflecting the effect of selling the applicable non-U.S. currency forward each month), which is intended solely to mitigate exposure to fluctuations between the currencies of the securities included in the JPIH Index and the U.S. dollar. The Fund intends to track the JPIH Index by (a) holding shares of the JPMorgan Diversified Return International Equity ETF (the "JPIH Underlying ETF"), an ETF whose investment objective is to seek investment results that correspond generally to the performance, before fees and expenses, of the JPIH Underlying Index, instead of the Fund investing directly in the shares of issuers of the individual securities of the JPIH Underlying Index[1] and (b) entering into foreign currency forward contracts.

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[1] Each Fund may, in very rare instances, invest directly in the shares of issuers of the individual securities of the applicable Underlying Index instead of holding shares of the applicable Underlying ETF if holding those individual securities would provide greater liquidity or other efficiencies to the Fund or if the Underling ETF is no longer accepting purchases. In such event, the

Continued

Similarly, the JPMorgan Diversified Return Europe Currency Hedged ETF will seek to provide investment results that closely correspond, before fees and expenses, to the performance of the FTSE Developed Europe Diversified Factor 100% Hedged to USD Index (the "JPEH Index" and together with the JPIH Index, the "Indexes"; each an "Index"), which consists of (a) the equity securities included in the FTSE Developed Europe Diversified Factor Index (the "JPEH Underlying Index" and together with the JPIH Underlying Index, the "Underlying Indexes"; each an "Underlying Index"), and (b) a currency hedging component (reflecting the effect of selling the applicable non-U.S. currency forward each month), which is intended solely to mitigate exposure to fluctuations between the currencies of the securities included in the JPEH Index and the U.S. dollar. The Fund intends to track the JPEH Index by (a) holding shares of the JPMorgan Diversified Return Europe Equity ETF (the "JPEH Underlying ETF" and together with the JPIH Underlying ETF, the "Underlying ETFs"; each an "Underlying ETF"), an ETF whose investment objective is to seek investment results that correspond generally to the performance, before fees and expenses, of the JPEH Underlying Index, instead of the Fund investing directly in the shares of issuers of the individual securities of the JPEH Underlying Index; and (b) entering into foreign currency forward contracts.

Accordingly, each Fund intends to operate primarily as an "ETF of ETFs." Except for the fact that each Fund intends to operate primarily as an ETF of ETFs, and enter into forward currency contracts as described above, each Fund will operate in a manner similar to its respective Underlying ETF.

The Requestors represent, among other things, the following:

- Shares of each Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV"), and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of each Fund will be listed and traded on the NYSE Arca (the "Exchange") or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act;
- Each ETF in which each Fund is invested will meet all conditions set forth in a relevant class relief letter;[2]
- All the components of each Index (except for each Index's currency hedging component)[3] will have publicly available last sale trade information;
- The intra-day proxy value of each Fund per share and the value of each Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the Funds' custodian, through the National Securities Clearing Corporation, will make publicly available the list of the names and the numbers of securities and other assets (except the forward currency contracts) of each Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per-share basis, the current value of the securities and cash to be deposited as consideration for the purchase of Creation Units;
- Each Fund will invest at least 80% of its total assets (but typically far more) in component securities of the applicable Index (primarily by indirect investments through the applicable Underlying ETF), except for entering into forward currency contracts[4] designed solely to hedge against each Fund's exposure to fluctuations between the applicable non-U.S. currencies in each Index and the U.S. dollar;
- Each Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between each Fund's market price and its NAV;
- The arbitrage mechanism will be facilitated by the transparency of each Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by each Fund, and the ability to acquire such securities, as well as arbitrageurs' ability to create workable hedges; and
- A close alignment between the market price of Shares and each Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[5] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of

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Fund will not operate as an ETF of ETFs for that day. Instead, the Fund will operate to meet the conditions of the ETF Class Relief, including the Equity ETF Class Letter. *See, e.g.*, Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006) regarding class relief for exchange traded index funds; Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie. Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007).

[2] *See id.*

[3] While each Index's currency hedging component does not have last sale information in the manner associated with equities, the prices for the relevant currency hedging contracts are publicly available.

[4] While exact percentages are dependent on movements in the applicable currency market, as a practical matter, each Fund is likely to have the vast majority of its assets invested in equities (*i.e.*, investments in the Underlying ETF) rather than forward currency contracts.

[5] While ETFs operate under exemptions from the definitions of "open-end company" under Section 5(a)(1) of the 1940 Act and "redeemable security" under Section 2(a)(32) of the 1940 Act, each Fund and its securities do not meet those definitions.

securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of each Fund and that a close alignment between the market price of Shares and each Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to each Fund, thus permitting persons participating in a distribution of Shares of each Fund to bid for or purchase such Shares during their participation in such distribution.[6]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of each Fund and that a close alignment between the market price of Shares and each Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Funds, thus permitting each Fund to redeem Shares of each Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10–b17 will not be implicated.[7]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to each Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of each Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to each Fund, thus permitting each Fund to redeem Shares of each Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter, and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the Shares of each Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Funds, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors and, consistent with all preceding letters, particularly with respect to the close alignment between the market price of Shares and each Fund's NAV. In addition, persons relying on this exemptive relief are directed to the antifraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemptive relief.

This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07681 Filed 4–4–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company (SBIC) Program: SBA Model Form of Agreement of Limited Partnership for an SBIC Issuing Debentures

AGENCY: Small Business Administration.

ACTION: Notice; issuance and effective date of Revised SBA Model Form of Agreement of Limited Partnership for an SBIC Issuing Debentures Only.

SUMMARY: The Small Business Administration (SBA) has updated the SBA Model Form of Agreement of Limited Partnership for an SBIC Issuing Debentures Only ("Model Version 3.0"). This update reflects comments received

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[6] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of each Fund and the receipt of securities in exchange by a participant in a distribution of Shares of each Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and, therefore, would not violate that rule.

[7] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical because it is not possible for the Funds to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[8] 17 CFR 200.30–3(a)(6) and (9).

from the public in response to notices SBA published in the **Federal Register** on April 22, 2014 and June 26, 2015. The Model Version 3.0 is available on SBA's Web site and is effective for all SBIC applicants as of October 1, 2016.

DATES: The effective date of the Model Version 3.0 is October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Schrader, Attorney Advisor, Department of Financial Law and Lender Oversight, Office of General Counsel, 409 Third Street SW., Washington, DC 20416; (202) 205–7115.

SUPPLEMENTARY INFORMATION: The SBIC Program was established under the Small Business Investment Act of 1958. SBICs are privately owned and managed investment funds, licensed and regulated by SBA, that use privately-raised capital plus funds borrowed with an SBA guarantee to make equity and debt investments in qualifying small businesses. The SBIC license application (SBA Forms 2181, 2182 and 2183) requires an applicant to submit, among other things, its organizational documents. The majority of applicants to the SBIC program are formed as limited partnerships, and these applicants must submit their limited partnership agreement as part of their application. The original version of SBA's model limited partnership agreement was developed in 2000 to assist SBIC applicants in producing a limited partnership agreement suitable for an SBIC and to facilitate this process by including provisions required by the regulations governing the SBIC Program (13 CFR part 107) and other SBA policy requirements designed to minimize the risk of loss to SBA in providing financial assistance to SBICs. That version was updated in 2004, with additional limited updates since that time ("Model Version 2.0"). The Model Version 2.0 is available on SBA's Web site at *www.sba.gov/sbic/investing-sbic/model-partnership-agreement.*

Since the last comprehensive update to the Model Version 2.0, changes have occurred both in the structure and operation of limited partnerships and in the venture capital industry. As part of its process of updating the Model Version 2.0, SBA published notices in the **Federal Register** soliciting comments and recommendations from the public on April 22, 2014, 79 FR 22568, and June 26, 2015, 80 FR 36881. SBA carefully considered the comments received and incorporated those that the Agency believed were appropriate into the Model Version 3.0. The Model Version 3.0 is available on SBA's Web site at *www.sba.gov/sbic/investing-sbic/model-partnership-agreement.*

All applicants, whether first time or subsequent fund applicants, that submit an SBIC license application on or after October 1, 2016 must use the Model Version 3.0 and follow the instructions set forth therein.

Authority: 15 U.S.C. 681.

Mark L. Walsh,
Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2016–07749 Filed 4–4–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14679 and #14680]

Texas Disaster # TX–00463

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 03/29/2016.

Incident: Severe Winter Storms, Tornadoes, Straight-line Winds and Flooding.

Incident Period: 12/26/2015 through 01/21/2016.

Effective Date: 03/29/2016.

Physical Loan Application Deadline Date: 05/31/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Collin, Dallas, Ellis, Rockwall, Van Zandt.

Contiguous Counties:

Texas: Denton, Fannin, Grayson, Henderson, Hill, Hunt, Johnson, Kaufman, Navarro, Rains, Smith, Tarrant, Wood.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14679 B and for economic injury is 14680 0.

The States which received an EIDL Declaration # are Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2016–07746 Filed 4–4–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before May 5, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: In accordance with regulations and policy, the Small Business Development Centers (SBDC's) must provide SBA semi-annual financial and programmatic reports-outlining expenditures and accomplishments. The information collected will be used to monitor the progress of the program.

Solicitation of Public Comments: SBA is requesting comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: "Federal Cash Transaction Report; Financial Status Report Program Income Report Narrative Program Report."

Description of Respondents: SBDC Directors.

Form Number: 2113.

Estimated Annual Responses: 726.

Estimated Annual Hour Burden: 7,308.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–07696 Filed 4–4–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14681 and #14682]

Oklahoma Disaster # OK–00099

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Oklahoma dated 03/29/2016.

Incident: Severe Winter Storms and Flooding.

Incident Period: 12/26/2015 through 01/05/2016.

Effective Date: 03/29/2016.

Physical Loan Application Deadline Date: 05/31/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cherokee, Mayes, Ottawa.

Contiguous Counties:

Oklahoma: Adair, Craig, Delaware, Muskogee, Rogers, Sequoyah, Wagoner.

Kansas: Cherokee.

Missouri: McDonald, Newton.

The Interest Rates Are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14681 B and for economic injury is 14682 0.

The States which received an EIDL Declaration # are Oklahoma, Kansas, Missouri.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–07745 Filed 4–4–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Delegation of Authority No. 356–1]

Delegation of the Secretary of State's Authorities in Title 8 of the United States Code Sections 1182e and 1182f to the Assistant Secretary for Consular Affairs and the Assistant Secretary of Democracy, Human Rights and Labor

By virtue of the authority vested in the Secretary of State, including the authority contained in 22 U.S.C. 2651a and 22 U.S.C. 2656, and 8 U.S.C. 1182e and 1182f, and delegated pursuant to Delegation of Authority 245–1, dated February 13, 2009, and to the extent authorized by law, I hereby delegate the authorities and duties vested in the Secretary of State, as follows:

a. To the Assistant Secretary for Democracy, Human Rights and Labor, in accordance with 22 U.S.C. 1182e and 1182f, and in consultation with other officials as appropriate, the authority to "find, based on credible and specific information" that a foreign national is or has been directly involved in the activities prohibited in § 1182e(a) and § 1182f(a), and to determine whether there are "substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such practices."

b. To the Assistant Secretary for Consular Affairs, in consultation with other officials as appropriate, the authority to direct consular officers not to issue visas under § 1182e(a) or § 1182f(a) as well as to waive the prohibitions set forth in those sections; and

c. To the Assistant Secretary for Consular Affairs, the authority to submit to Congress written notification of waiver justifications required by § 1182e(c)(2) and § 1182f(c)(2), based on determinations made by the Secretary or other official with delegated authority.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time. This delegation of authority revokes Delegation of Authority 356, dated April 12, 2013, but does not supersede or otherwise affect any other delegation of authority to submit Congressional notifications.

The Assistant Secretaries of Consular Affairs and Democracy, Human Rights and Labor may, to the extent consistent with applicable law, redelegate these functions within their respective bureaus, with the limitation that waiver authority may not be delegated below the level of Deputy Assistant Secretary.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, and the Deputy Secretary for Management and Resources may at any time exercise any authority or function delegated hereunder. The Under Secretary for Management may at any time exercise any authority or function that is delegated herein to the Assistant Secretary of Consular Affairs. The Under Secretary of Civilian Security, Democracy, and Human Rights may at any time exercise any authority or function that is delegated herein to the Assistant Secretary of Democracy, Human Rights and Labor.

This delegation of authority shall be published in the **Federal Register**.

Dated: March 16, 2016.

Antony J. Blinken,

Deputy Secretary of State, Department of State.

[FR Doc. 2016–07808 Filed 4–4–16; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice: 9511]

In the Matter of the Designation of Salah Abdeslam as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Salah Abdeslam, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 28, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–07813 Filed 4–4–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to revise a previously approved information collection. Part A of Subtitle VII of the Revised Title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. Information is collected to determine compliance with Federal regulations. This revision addresses requirements from the Enhanced Flight Vision Systems (EFVS) Rule, RIN 2120–AJ94.

DATES: Written comments should be submitted by May 5, 2016.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules.

Form Numbers: None.

Type of Review: Revision of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 4, 2016 (81 FR 139). There were no comments. The reporting and recordkeeping requirements of Federal Aviation Regulation (FAR) Part 91, General Operating and Flight Rules, are authorized by Part A of Subtitle VII of the Revised Title 49 United States Code. FAR Part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets and unmanned free balloons) within the United States. The reporting and recordkeeping requirements prescribed by various sections of FAR Part 91 are necessary for FAA to assure compliance with these provisions.

Respondents: Approximately 21,200 airmen, state or local governments, and businesses.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: .5 hour.

Estimated Total Annual Burden: 235,183 hours.

Issued in Washington, DC, on March 30, 2016.

Ronda Thompson,

FAA Information Collection Clearance Officer, Performance, Policy & Records Management Branch, ASP–110.

[FR Doc. 2016–07781 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty-Ninth Meeting: RTCA Special Committee (224) Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Thirty-Ninth RTCA Special Committee 224 Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Thirty-Ninth RTCA Special Committee 224 meeting.

DATES: The meeting will be held May 5, 2016 from 10:00 a.m.–3:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330–0662.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Karan Hofmann, Program Director, RTCA, Inc., *khofmann@rtca.org,* (202) 330–0680.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 224. The agenda will include the following:

Thursday, May 5, 2016

1. Welcome/Introductions/Administrative Remarks
2. Review/Approve Previous Meeting Summary
3. Report from the TSA
4. Report on Safe Skies on Document Distribution
5. Report on TSA Security Construction Guidelines progress
6. FRAC Resolution and approval of DO–230G
7. Review of DO–230H Sections
8. Action Items for Next Meeting
9. Time and Place of Next Meeting
10. Any Other Business
11. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 31, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–07784 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 48 State projects involving the acquisition of vehicles and equipment on the condition that they be assembled in the U.S.

DATES: The effective date of the waiver is April 6, 2016.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, 202–366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, 202–366–1373, or via email at *jomar.maldonado@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government Publishing Office's database at *http://www.access.gpo.gov/nara.*

Background

This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 48 State projects involving the acquisition of vehicles (including sedans, vans, pickups, trucks, buses, and street sweepers) and equipment (such as trail grooming equipment) on the condition that they be assembled in the U.S. The waiver would apply to approximately 393 vehicles and equipment acquisitions. The requests for the third quarter of calendar year 2015, available at *http://www.fhwa.dot.gov/construction/contracts/cmaq160105.cfm,* are incorporated by reference into this notice. These projects are being undertaken to implement air quality improvement, safety, and mobility goals under FHWA's Congestion Mitigation and Air Quality Improvement Program and the Recreational Trails Program.

Title 23, Code of Federal Regulations, section 635.410 requires that steel or iron materials (including protective coatings) that will be permanently incorporated in a Federal-aid project must be manufactured in the U.S. For FHWA, this means that all the processes that modified the chemical content, physical shape or size, or final finish of the material (from initial melting and mixing, continuing through the bending and coating) occurred in the U.S. The statute and regulations create a process for granting waivers from the Buy America requirements when its application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. In 1983, FHWA determined that it was both in the public interest and consistent with the legislative intent to waive Buy America for manufactured products other than steel manufactured products. However, FHWA's national waiver for manufactured products does not apply to the requests in this notice because they involve predominately steel and iron manufactured products. The FHWA's Buy America requirements do not have special provisions for applying Buy America to "rolling stock" such as vehicles or vehicle components (see 49 U.S.C. 5323(j)(2)(C), 49 CFR 661.11, and 49 U.S.C. 24405(a)(2)(C) for examples of Buy America rolling stock provisions for other DOT agencies).

Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers that produce the vehicles and vehicle components identified in this notice in such a way that their steel and iron elements are manufactured domestically. The FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet the requirement that steel and iron materials be manufactured domestically. In today's global industry, vehicles are assembled with iron and steel components that are manufactured all over the world. The FHWA is not aware of any domestically produced vehicle on the market that meets FHWA's Buy America requirement to have all its iron and steel be manufactured exclusively in the U.S. For example, the Chevrolet Volt, which was identified by many commenters in a November 21, 2011, **Federal Register** Notice (76 FR 72027) as a car that is made in the U.S., is comprised of only 45 percent of U.S. and Canadian content according to the National Highway Traffic Safety Administration's Part 583 American Automobile Labeling Act Report Web page (*http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+(AALA)+Reports*). Moreover, there is no indication of how much of this 45 percent content is U.S.-manufactured (from initial melting and mixing) iron and steel content.

In accordance with Division K, section 122 of the "Consolidated and

Further Continuing Appropriations Act, 2015" (Pub. L. 113–235), FHWA published a notice of intent to issue a waiver on its Web site at *http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=117* on January 5, 2016. The FHWA received five comments in response to the publication. Four commenters suggested that preference should be given to American products in support of American workers and a waiver should only be granted if there are no domestic products available. These commenters did not provide a recommendation for domestic products that fully comply with FHWA's Buy America requirements. The fifth commenter supports granting a waiver and agreed that domestic assembly for the vehicles seems to be the only course to follow.

Based on FHWA's conclusion that there are no domestic manufacturers that can produce the vehicles and equipment identified in this notice in such a way that steel and iron materials are manufactured domestically, and after consideration of the comments received, FHWA finds that application of FHWA's Buy America requirements to these products is inconsistent with the public interest (23 U.S.C. 313(b)(1) and 23 CFR 635.410(c)(2)(i)). However, FHWA believes that it is in the public interest and consistent with the Buy America requirements to impose the condition that the vehicles and the vehicle components be assembled in the U.S. Requiring final assembly to be performed in the U.S. is consistent with past guidance to FHWA Division Offices on manufactured products (see Memorandum on Buy America Policy Response, Dec. 22, 1997, *http://www.fhwa.dot.gov/programadmin/contracts/122297.cfm*). A waiver of the Buy America requirement without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover, in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal Highway Trust Fund dollars are used to support and create jobs in the U.S. This approach is similar to the conditional waivers previously given for various vehicle projects. Thus, so long as the final assembly of the 48 State projects occurs in the U.S., applicants to this waiver request may proceed to purchase these vehicles and equipment consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Technical Corrections Act of 2008" (Pub. L. 110–244), FHWA is providing this notice of its finding that a public interest waiver of Buy America requirements is appropriate on the condition that the vehicles and equipment identified in the notice be assembled in the U.S. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: March 29, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–07800 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Daimler Trucks North America (Daimler) has requested an exemption for one commercial motor vehicle (CMV) driver from the Federal requirement to hold a U.S. commercial driver's license (CDL). Daimler requests a five-year exemption for Ms. Melanie Baumann, executive assistant to the head of the Daimler Trucks and Bus Division. Ms. Baumann holds a valid German commercial license and wants to test drive Daimler vehicles on U.S. roads to better understand product requirements in "real world" environments, and verify results. Daimler believes the requirements for a German commercial license ensure that operation under the exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: Comments must be received on or before May 5, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2012–0032 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2012–0032), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, "FMCSA–2012–0032" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Section 5206(a)(2) of the "Fixing America's Surface Transportation Act," (FAST Act) [Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015], effective October 1, 2015, permits exemptions for no longer than five years from their dates of inception, instead of the previous two years. This statutory provision will be codified in 49 CFR part 381 in a forthcoming rulemaking.

III. Request for Exemption

Daimler has applied for a 5-year exemption for Melanie Baumann from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Ms. Baumann is unable to obtain a CDL in any of the U.S. States due to her lack of residency in the United States. A copy of the application is in Docket No. FMCSA–2012–0032.

The exemption would allow Ms. Baumann to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements and to promote technological advancements in vehicle safety systems and emissions reductions. Ms. Baumann needs to drive Daimler vehicles on public roads to better understand "real world" environments in the U.S. market. According to Daimler, Ms. Baumann will typically drive for no more than 6 hours per day for 2 consecutive days, and that 10 percent of the test driving will be on two-lane State highways, while 90 percent will be on Interstate highways. The driving will consist of no more than 200 miles per day, for a total of 400 miles during a two-day period on a quarterly basis. She will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled.

Ms. Baumann holds a valid German commercial license, and as explained by Daimler in its exemption request, the requirements for that license ensure that the same level of safety is met or exceeded as if this driver had a U.S. CDL. Furthermore, according to Daimler, Ms. Baumann is familiar with the operation of CMVs worldwide.

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. Since 2012, FMCSA has granted Daimler drivers similar exemptions [May 25, 2012 (77 FR 31422); July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)].

Issued on: March 25, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–07719 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0397]

Commercial Driver's License: Oregon Department of Transportation; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the Oregon Department of Transportation (ODOT) a limited exemption from the commercial learner's permit (CLP) requirement in 49 CFR 383.25(c). All State Driver's Licensing Agencies (SDLAs) are allowed to use this exemption at their discretion. The exemption will allow ODOT and participating SDLAs to extend to one year the 180-day timeline for the CLP from the date of issuance, without requiring the CLP holder to retake the general and endorsement knowledge tests. Under the exemption, an applicant wishing to have a new CLP after the previous one expires will be required to take all applicable tests before a new CLP is issued.

DATES: This exemption is effective April 5, 2016, and expires April 5, 2018.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards;

Telephone: 202–366–4325, Email: *MCPSD@dot.gov,* Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. If you have questions on viewing material in the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, "FMCSA–2015–0397 in the "Keyword" box and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

ODOT requested an exemption from the Agency's CLP requirement in 49 CFR 383.25(c). The regulation provides that the CLP be valid for no more than 180 days from the date of issuance. The State may renew the CLP for an additional 180 days without requiring the CLP holder to retake the general and endorsement knowledge tests. ODOT proposed that it be allowed to extend the 180-day timeline to one year for CLPs issued to its drivers.

ODOT provided multiple reasons for regulatory relief from the CLP rule. First, ODOT believes that the 180-day time line required to renew the CLP adds nothing to the effectiveness of the rule itself, the purpose of which is to "enhance safety by ensuring that only qualified drivers are allowed to operate commercial vehicles on our nation's highways" (76 FR 26854, May 9, 2011). ODOT asserts that neither FMCSA staff nor the States were able to identify any highway safety enhancement arising from this requirement. ODOT states that it is unaware of any data suggesting that persons who have not renewed their CLP or obtained their CDL within six months pose less risk on the Nation's highways.

Second, ODOT agrees that requiring CLP holders to retake the knowledge test after not obtaining a CDL within one year improves highway safety, but disagrees that the requirement for renewal at six months is needed. According to ODOT, if the exemption is granted, ODOT's CLP would have a validity period of one year with no renewal allowed. All applicable knowledge tests would be required before a new CLP could be issued, which would accomplish the objective of not allowing a person to have a CLP longer than one year without passing knowledge tests.

The third reason for the request is that Oregon's "Department of Motor Vehicle (DMV) field offices have a very large volume of work to accomplish and, at best, limited resources with which to accomplish it. Adding the bureaucratic requirement for a CLP holder to visit a DMV office and pay a fee in order to get a second six months of CLP validity will add unnecessary workload to offices already stretched to the limit. ODOT is confident there would be no negative impact on safety if the exemption is granted."

According to ODOT, "If this exemption is not granted, Oregon drivers with CLPs who have not passed the CDL skills test within six months of CLP issuance would have to go to a DMV office and pay for a renewal of the CLP. This would cause undue hardship to the drivers, from the perspectives of both their time and their pocketbooks. It would also cause undue hardship to our agency, where scarce resources would be used to process bureaucratic transactions that add nothing to highway safety."

In addition, because the issues concerning ODOT's request could be applicable in each State, FMCSA requested public comment on whether the exemption, if granted, should apply to all SDLAs.

VI. Public Comments

On November 27, 2015, FMCSA published notice of this application and requested public comment (80 FR 74199). The Agency received 10 comments representing various interests in response to the proposed exemption.

Six comments received in support of the exemption were from the Alabama Law Enforcement Agency (ALEA); Colorado Department of Revenue CDL Unit (Colorado); New York Department of Motor Vehicles (New York DMV); Oregon Trucking Associations, Inc. (OTA); and two individuals.

The ALEA commented that "this requirement is an added financial burden to the CLP holder by having to pay additional fees for renewal and if applicable, any re-testing fees. Therefore, ALEA is in complete agreement with the Oregon Department of Transportation in their petition to allow the CLP to be valid for one year."

Colorado commented "Regarding FMCSA's request that should this be applicable to all states. Colorado is concerned that 77% of the SDLA's have already made the programming changes to issue only a 180 day CLP. Making a change at this point could be very confusing and possibly expensive for SDLA's and the CDL industry. Colorado would suggest that FMCSA leave the rule as is. However, Colorado would also suggest that FMCSA work with ODOT one on one regarding this issue to determine if an exemption should be granted to ODOT. If FMCSA believes an exemption should be granted to ODOT, Colorado would support FMCSA granting Oregon's exemption request."

The New York DMV commented that "New York supports granting Oregon's request for an exemption from 49 CFR 383.25(c) which requires that a CLP must be valid for no more than 180 days. The exemption should apply to all SDLAs, allowing states to set their own CLP expiration date, provided the CLP's validity does not exceed one year."

The OTA commented "FMCSA has asked if the exemption requested by ODOT should be extended to other states? Our response is, absolutely and we believe FMCSA should go one step further and change the underlying regulation to allow issuance of a CLP for 1-year."

Mr. Vardis Gaus wrote "I believe this extension to be valid."

Mr. Daniel Tucker commented "As a CDL driver, instructor and state-certified third-party evaluator I believe this proposal/request makes all the sense in the world. Allowing up-to a year practice and development for an entry level driver candidate or re-entering driver allows them to take as much time necessary to build (or rebuild) skills."

Four comments opposing the exemption were from the Commercial Vehicle Training Association (CVTA) and three individuals.

The CVTA summarized its opposition to the exemption by stating "We urge FMCSA to deny ODOT's request for an exemption from the 180-day CLP renewal requirement. Granting such an exemption carries serious safety concerns and sends the wrong message regarding FMCSA's willingness to accommodate underfunded CDL programs across the Country. Granting this exemption would signal to states that FMCSA will not only tolerate state practices of underfunding CDL programs, but will accommodate them. Moreover, granting this exemption would undercut Congress' recent efforts to put greater pressure on FMCSA and states to ensure that state CDL programs are more adequately funded and efficiently administered."

Josh Anonymous wrote "Don't do it. Six months is plenty."

Mr. Roland Doe wrote "Send a message to such an unfriendly bureaucracy: NO dice on the waiver request. If other states can meet the Federal requirement—and the majority of them are much easier to do business with—even California—so can ODOT."

Mr. Gary Scott commented that "A learner's permit should only be valid for 6 months. If a person cannot achieve a level of proficiency within that time period to acquire a permanent CDL then maybe they should consider another line of work."

All comments are available for review in the docket for this notice.

V. FMCSA Response and Decision

The FMCSA has evaluated ODOT's application on its merits following full consideration of the comments submitted to the docket, and has decided to grant the exemption from 49 CFR 383.25(c) for a period of 2 years. The exemption covers ODOT and all SDLAs. Extending the exemption to cover all SDLAs, at their discretion, will preclude the need for other SDLAs choosing to use the exemption to file identical exemption requests. FMCSA believes that safety would not be diminished by allowing a validity period of one year for the CLP. The maximum time allowed between taking the knowledge tests and obtaining the CDL is 12 months under the current rule and under the exemption. The exemption avoids the necessity of obtaining a renewal of the CLP after 6 months if the State chooses to allow that. FMCSA determined that the exemption would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption (49 CFR 381.305(a)).

Issued on: March 25, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–07730 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

FY 2016 Railroad Safety Technology Grant Funds

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: This notice details the application requirements and procedures for obtaining funding for eligible Railroad Safety Technology Grant projects. The opportunities described in this notice are available under Catalog of Federal Domestic Assistance number 20.321, "Railroad Safety Technology."

DATES: Applications for funding under this solicitation are due no later than 5:00 p.m. DST May 20, 2016. Applications for funding received after 5:00 p.m. DST on May 20, 2016 will not be considered. See Section 4 of this notice for additional information regarding the application process.

ADDRESSES: Applications must be submitted via Grants.gov. For any required or supporting application materials that an applicant is unable to submit via Grants.gov (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Mr. Marvin Winston, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W36–440, Washington, DC 20590; Email: *marvin.winston@dot.gov.* However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: If you have a project related question, you may contact Dr. Mark Hartong, Scientific and Technical Advisor (Phone: (202) 493–1332; email: *Mark.Hartong@dot.gov*), or Mr. Devin Rouse, Program Manager (Phone: (202) 493–6185, email: *devin.rouse@dot.gov*). Grant application submission and processing questions should be addressed to Mr. Marvin Winston, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W36–440, Washington, DC 20590; Email: *marvin.winston@dot.gov.*

SUPPLEMENTARY INFORMATION:

Notice to applicants: FRA recommends applicants read this notice in its entirety prior to preparing application materials. There are several administrative prerequisites described herein that applicants must comply with in order to submit an application, as well as specific eligibility requirements that must be met. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length (including any appendices).

Table of Contents

1. Funding Opportunity Description
2. Award Information
3. Eligibility and Review Criteria
4. Application and Submission Information
5. Award Administration Information
6. Agency Contact

Section 1: Funding Opportunity Description

The purpose of this notice is to solicit applications for grants for eligible railroad safety technology projects. Congress appropriated the funding available under this NOFO, $25 million, in the Consolidated Appropriations Act, 2016, Division L, Title I (Pub. L. 114–113 (December 18, 2015)), to carry out railroad safety technology grants as set forth in 49 U.S.C. 20158. To maximize the benefits of the funding available, FRA is limiting the eligible projects to those that implement a Positive Train Control (PTC) system or, as described in Section 3, will otherwise benefit overall PTC system implementation on freight, intercity passenger, and commuter railroads.

Section 2: Award Information

FRA anticipates making multiple awards from the funding made available in this notice and is not predetermining any minimum or maximum dollar amounts for awards. However, given the limited amount of funding currently available, applicants are encouraged to limit their Federal funding requests to a maximum of $3,000,000 per application. While this $3,000,000 application limit is a recommendation and not a firm requirement, applicants exceeding this $3,000,000 threshold must explain why any requested funding over $3,000,000 is necessary to implement the proposed project. Collaborative applicants submitting a project that will benefit more than five (5) entities (*e.g.,* one entity implementing back office systems for multiple (five or more) railroads) may request up to the authorized appropriation limit of $25,000,000. Additionally, FRA may choose to award a grant for less than the amount requested in the application. FRA will make awards for projects selected under this notice as grants with an 80% federal/20% non-federal cost share. The funding provided under these grants will be made available to grantees on a reimbursable basis.

Applications will proceed through a three-part review process:

1. Screening for completeness and eligibility;
2. Evaluation of eligible applications by technical panels applying the evaluation criteria; and
3. Project selection by the FRA Administrator applying additional selection criteria.

Each application will first be screened for eligibility (requirements outlined in Section 3 of this notice) and completeness (containing all required documentation outlined in Section 4 of this notice).

A technical panel consisting of subject-matter experts will evaluate eligible and complete applications using the evaluation criteria outlined in Section 3 of this notice. FRA will award funds to projects that are well-aligned with one or more of the evaluation and selection criteria. In addition, FRA will consider whether a project has a negative effect on any of the evaluation and selection criteria, and any such negative effect may reduce the likelihood that it will select the project for award.

Section 3: Eligibility and Review Criteria

The following entities are eligible applicants for PTC implementation projects:

- Passenger and freight railroad carriers;
- Railroad suppliers; and
- State and local governments for projects that have a public benefit of improved safety and network efficiency.

To be eligible for assistance, the above entities subject to 49 U.S.C. 20157(a) must have submitted a revised Positive Train Control Implementation Plan (PTCIP) to FRA as required by 49 U.S.C. 20157(a). FRA considers the development and submission of a revised PTCIP under 49 U.S.C. 20157(a) to meet the eligibility requirement related to submitting a plan required under 49 U.S.C. 20156(e)(2) containing an analysis of the impact, feasibility, costs and benefits of implementing PTC system technology. FRA believes that any submission connected to sec. 20156(e)(2), which has yet to be incorporated into a Federal regulation, would merely be duplicative of what a railroad analyzed when it developed and submitted a revised PTCIP. Thus, FRA considers the submission of a revised PTCIP to meet the eligibility requirements in 49 U.S.C. 20158(b)(3) for purposes of this NOFO. If an applicant is not required to comply with either sec. 20157(a) or sec. 20156(e)(2), the applicant must demonstrate that to FRA's satisfaction in its NOFO application.

The FRA is soliciting applications for projects that will benefit overall PTC system implementation on freight, intercity passenger, and commuter railroads. Under 49 U.S.C. 20158(b)(2), the FRA shall give priority to projects that (A) focus on making technologies interoperable between railroad systems, such as train control technologies; (B) accelerate train control technology deployment on high-risk corridors, such as those that have high volumes of hazardous materials shipments or over which commuter or passenger trains operate; or (C) benefit both passenger and freight safety and efficiency. Given that the amount of funding available is not likely sufficient to cover the costs necessary to deploy PTC on any given railroad, FRA will further prioritize projects that not only fall within these areas but also involve:

1. An entity or entities that have submitted a revised PTCIP and demonstrated progress in implementing PTC in accordance with its PTCIP and have shown good faith in attempting to timely complete PTC implementation;
2. Collaboration between freight and passenger railroad carriers, railroad suppliers, and State and local governments, particularly related to interoperability and other industry-wide PTC technical and management issues;
3. The development and deployment of technologies that will lower costs, accelerate implementation, increase interoperability between host and tenant operations, and improve reliability of PTC systems; and
4. The development and deployment of technologies that will eliminate PTC communications interference, provide solutions to configuration management of multi-railroad PTC software and firmware deployments, eliminate PTC communications interference; provide configuration management of multi-railroad PTC software and firmware deployments; and provide host-tenant railroad PTC interoperability/system certification.

Examples of eligible projects include the following:

- Costs for implementation, installation, and testing of PTC systems;
- Costs for shared PTC infrastructure (*e.g.,* back office systems, CAD systems); and
- Costs to advance PTC interoperability, such as pilot programs, standardization committees, development of standard processes, and spectrum acquisition, sharing, and desensitization.

Applicants should note that these aspects represent suggested areas of interest by the FRA, and any otherwise eligible applications meeting the criteria above will be evaluated and considered for award.

By statute, 49 U.S.C. 20158 allows for up to an 80 percent Federal share of project costs. The required 20 percent non-Federal match may be comprised of public sector (state or local) or private sector funding. However, the FRA cannot consider any other Federal funds, nor any non-Federal funds already expended (or otherwise encumbered), towards the matching requirement. Additionally, FRA is limiting the method for calculating the non-Federal match to cash contributions only—"in-kind" contributions will not be accepted. Matching funds provided in excess of the minimum requirement will be considered in evaluating the merit of an application.

FRA intends to award funds to PTC projects that achieve the maximum public benefits possible. Analysis provided by applicants that quantifies the monetary value (whenever possible) of the anticipated public benefits of the proposed project will be particularly relevant to the FRA in evaluating applications. The systematic process of comparing expected benefits and costs helps decision-makers organize information about, and evaluate tradeoffs between, alternative transportation investments. FRA will consider benefits and costs using standard data and qualitative information provided by applicants and will evaluate applications in a manner consistent with Executive Order 12893 (Principles for Federal Infrastructure Investments, 59 FR 4233), Office of Management and Budget (OMB)

Circular A–94 (Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs), and OMB Circular A–4 (Regulatory Analysis). Applications for PTC projects will be reviewed by DOT subject matter experts against the following three evaluation criteria:

- PTC Deployment Benefits;
- Technical Merit; and
- Project Development approach.

PTC Deployment Benefits

The following factors will be considered in assessing a proposed project's achievement of PTC deployment benefits:

- The degree to which the successful implementation of the proposed project would advance the technical deployment of PTC, including improvements to reliability, safety, security, and maintainability;
- The degree to which the successful implementation of the proposed project would decrease PTC implementation and maintenance costs; and
- The degree to which the project maximizes the return on investment (ROI) towards industry-wide implementation efforts.

Technical Merit

The following factors will be considered in assessing a proposed project's technical merit:

- The degree to which the proposed project exhibits a sound scientific and engineering basis;
- The degree to which the proposed project could be practically applied in and compatible with the railroad's operating environment and infrastructure; and
- The perceived likelihood of technical and practical success.

Project Development Approach

The following factors will be considered in assessing the proposed project's planning and development to date:

- The technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts, and qualifications of primary and supporting organizations to fully and successfully execute the proposal plan within the proposed timeframe and budget;
- The degree to which proposed effort is supported by multiple entities (letters of support are encouraged);
- The affordability and degree to which the proposed effort appears to be a good value for the amount of funding requested. Good value is defined as believing or concluding that the goods/services received were worth the price paid. Examples of the types of factors that may be considered include, but are not limited to, suitability, quality, skills, price, and life-cycle cost. The mix of these and other factors and the relevant importance of each will vary on a case by case basis;
- The reasonableness and realism of the proposed costs;
- The extent of proposed cost sharing or cost participation under the proposed effort (exclusive of the applicant's prior investment); and
- Preference will be given to projects that can demonstrate an ability to substantially complete work, or otherwise provide benefits to industry, prior to December 31, 2018.

All evaluation criteria, when combined, are significantly more important than cost or price alone. While cost or price will be a factor that is considered, technical merit is appreciably more important and, as such, greater consideration will be given to technical excellence. An offer must be found acceptable under all applicable evaluation factors to be considered eligible for award.

Selection Criteria

In addition to the evaluation criteria outlined above, the FRA Administrator will apply the following selection criteria to further ensure that the projects selected for funding advance FRA's current mission and key priorities:

Alignment with the DOT Strategic Goals and Priorities

- Improving transportation safety;
- Maintaining transportation infrastructure in a state of good repair;
- Promoting economic competitiveness;
- Advancing environmentally sustainable transportation policies;
- Enhancing quality of life; and
- Building ladders of opportunity to expand the middle class.

Proposed projects that demonstrate the ability to provide reliable, safe and affordable transportation choices to connect economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities in disconnected communities with employment, training and education will receive particular consideration during project selection.

Project Delivery Performance

- The applicant's track record in successfully delivering previous FRA and DOT grants on time, on budget, and for the full intended scope;
- The applicant's means for achieving satisfactory continuing control over project assets in a timely manner, including public ownership of project assets or agreements with railroad operators and infrastructure owners at the time of application; and
- The extent to which the proposed project complements previous FRA or DOT awards.

Region/Location

- The extent to which the proposed project increases the economic productivity of land, capital, or labor at specific locations, particularly in economically distressed areas;
- Ensuring appropriate level of regional balance across the country;
- Ensuring consistency with national transportation and rail network objectives; and
- Ensuring integration with other rail services and transportation modes.

Innovation/Resource Development

- Pursuing new rail technologies that result in favorable public return on investment and ensure delivery of project benefits; and
- Promoting innovations that demonstrate the value of new approaches to, among other things, transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance.

Federal Awardee Performance and Integrity Information System (FAPIIS) Review

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through the System for Award Management (SAM) (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) (see 41 U.S.C. 2313).

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2

CFR 200.205 (Federal Awarding Agency Review of Risk Posed by Applicants).

Section 4: Application and Submission Information

Complete applications must be submitted to Grants.gov no later than 5:00 p.m. DST, May 20, 2016. Applicants are strongly encouraged to apply early to ensure that all materials are received before this deadline.

To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and submit an application can be found at Grants. gov. Registering with Grants.gov is a onetime process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension. (Please note that if a Dun &Bradstreet (DUNS) number must be obtained, this may take a significant amount of time to complete.)

Required documents for the application package are outlined in the following paragraphs. Applicants must complete and submit all components of the application package. FRA welcomes the submission of other relevant supporting documentation that may have been developed by the applicant (planning, engineering and design documentation, and letters of support). In particular, applications accompanied by completed feasibility studies and cost estimates may be more favorably considered during the evaluation process, as they demonstrate that an applicant has a greater understanding of the scope and cost of the project.

Applicants should submit all application materials through Grants.gov. For any required or supporting application materials that an applicant is unable to submit via Grants.gov (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Mr. Marvin Winston, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W36–440, Washington, DC 20590; Email: *marvin.winston@dot.gov*. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials. Additionally, if documents can be obtained online, direction to access files on a referenced Web site may also be sufficient.

The following points describe the minimum content which are required in the Project Narrative component of grant applications (additionally, FRA recommends that the Project Narrative generally adhere to the following outline). These requirements must be satisfied through a narrative statement submitted by the applicant, and may be supported by spreadsheet documents, tables, maps, drawings, and other materials, as appropriate. The Project Narrative may not exceed 25 pages in length (including any appendices). Applications containing Project Narratives that exceed this 25 page limitation will not be reviewed or considered for award.

Applicants should read this section carefully and must submit all required information.

1. Include a title page that lists the following elements in either a table or formatted list: Project title, location (*i.e.,* city, State, district), the applicant organization name, the name of any co-applicants, and the amount of Federal funding requested and the proposed non-Federal match.

2. Designate a point of contact for the applicant and provide his or her name and contact information, including phone number, mailing address and email address. The point of contact must be an employee of an eligible applicant.

3. Indicate the amount of Federal funding requested, the proposed non-Federal match, and total project cost. Additionally, identify any other sources of Federal funds committed to the project, as well as any pending Federal requests. Make sure to also note if the requested Federal funding must be obligated or expended by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, or other factors. Finally, specify whether Federal funding has ever previously been sought for the project and not secured, and name the Federal program and fiscal year for funding request.

4. Explain how the applicant meets the applicant eligibility criteria, as outlined in Section 3 of this notice.

5. Provide a brief 4–6 sentence summary of the proposed project, capturing the transportation challenges the proposed project aims to address, as well as the intended outcomes and anticipated benefits that will result from the proposed project.

6. Include a detailed project description that expands upon the brief summary required above. This detailed description should provide, at a minimum, additional background on the transportation challenges the project aims to address, the expected users and beneficiaries of the project, the specific components and elements of the project, and any other information the applicant deems necessary to justify the proposed project. The detailed description should also clearly explain how the proposed project meets the project eligibility criteria, as outlined in Section 3 of this notice.

7. Include a thorough discussion of how the project meets all of the evaluation criteria for the respective project type, as outlined in Section 3 of this notice. Applicants should note that FRA reviews applications based upon the evaluation criteria. If an application does not sufficiently address the evaluation criteria, it is unlikely to be a competitive application. In responding to the criteria, applicants are reminded to clearly identify, quantify, and compare expected benefits and costs of proposed projects. The FRA understands that the level of detail and sophistication of analysis that should be expected for relatively small projects (*i.e.,* those encouraged to be limited to under $3,000,000 in this notice) is less than for larger investments.

8. Describe proposed project implementation and project management arrangements. Include descriptions of the expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting.

Additional Application Elements

Applicants must:

○ Submit a Statement of Work (SOW) that addresses the scope, schedule, and budget for the proposed project if it were to be selected for award. The SOW must contain sufficient detail so that both FRA and the applicant can understand the expected outcomes of the proposed work to be performed and monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. FRA has developed a standard SOW template that applicants must use to be considered for award. The SOW templates and other required forms are located at *www.fra.dot.gov/Page/P0701;*

○ Describe anticipated environmental and historic preservation impacts associated with the proposed project, any environmental or historic preservation analyses that have been prepared, and progress toward completing any environmental documentation or clearance required for the proposed project under National Environmental Policy Act (NEPA), the National Historic Preservation Act, section 4(f) of the U.S. DOT Act, the Clean Water Act, and other applicable Federal or State laws. Applicants are encouraged to contact FRA and obtain preliminary direction regarding the appropriate NEPA action and required environmental documentation. Generally, projects will be ineligible to receive funding if they have begun construction activities prior to the applicant receiving written approval from FRA that all environmental and historical analyses have been completed. Additional information regarding FRA's environmental processes and requirements are located at *https://www.fra.dot.gov/eLib/Details/L05286;*

○ Submit the FRA's Additional Assurances and Certifications;

○ Submit an SF 424A—Budget Information for Non-Construction or SF 424C—Budget Information for Construction;

○ Submit an SF 424B—Assurances for Non-Construction or SF 424D—Assurances for Construction; and

○ Submit an SF LLL: Disclosure of Lobbying Activities.

Section 5: Award Administration

Award Notices for applications selected for funding will be announced after the application review period. FRA will contact successful applicants after announcement with information and instructions about the award process. Notification of a selected application is not an authorization to begin proposed project activities. The period of performance for grants awarded under this notice is dependent upon the project, and will be determined on a grant-by-grant basis. Extensions to the period of performance will be considered only through written requests to the FRA with specific and compelling justifications for why an extension is required. Any obligated funding that has not been spent by the grantee and reimbursed by the FRA upon completion of the grant will be de-obligated.

The grantee and any sub-grantee must comply with all applicable laws and regulations. A non-exclusive list of administrative and national policy requirements that grantees must follow includes: 2 CFR part 200, procurement standards, compliance with Federal civil rights laws and regulations, disadvantaged business enterprises (DBE), debarment and suspension, drug-free workplace, FRA's and OMB's Assurances and Certifications, Americans with Disabilities Act (ADA), labor standards, safety oversight, environmental protection, NEPA, environmental justice, and Buy America or Buy American provisions (as applicable).

Reporting Requirements

The applicant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports. Reports may be submitted electronically. The applicant must comply with all relevant requirements of 2 CFR 180.335 and 180.350.

The grantee must comply with all post-award reporting, auditing, monitoring, and close-out requirements.

Section 6: Agency Contact

If you have a project related question, you may call Dr. Mark Hartong, Scientific and Technical Advisor (Phone: (202) 493–1332; email: *Mark.Hartong@dot.gov*), or Mr. Devin Rouse, Program Manager (Phone: (202) 493–6185, email: *devin.rouse@dot.gov*). Grant application submission and processing questions should be addressed to Mr. Marvin Winston, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W36–440, Washington, DC 20590; Email: *marvin.winston@dot.gov.*

Information Collection: OMB has approved the information collection associated with the Rail Safety Technology Grants Program. The approval number for this collection of information is OMB No. 2130–0587.

Issued in Washington, DC on March 31, 2016.

Mary Ann McNamara,

Chief, Grant Management Division.

[FR Doc. 2016–07780 Filed 4–4–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2016–0018]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the revision of the currently approved information collection:

49 U.S.C. Sections 5310 and 5311—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Non-Urbanized Area Formula Program

OMB Control No.: 2132–0500

DATES: Comments must be submitted before June 6, 2016.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Marianne Stock, Office of Program Management, (202) 366–2677 or email *Marianne.stock@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Sections 5310 and 5311—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Non-Urbanized Area Formula Program (OMB Number: 2132–0561)

Background: 49 U.S.C. 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities in large urban, small urban and rural areas. Formula funding is apportioned to direct recipients: States for rural (under 50,000 population) and small urban (areas (50,000–200,000); and designated recipients chosen by the Governor of the State for large urban areas (populations or 200,000 or more); or a State or local governmental entity that operates a public transit service. Section 3006(b) of Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94 authorizes a pilot program for innovative coordinated access and mobility. 49 U.S.C. 5311—Formula Grants for Rural Areas provides financial assistance for the provision of public transportation services in rural areas. This program is administered by States. The Public Transportation on Indian Reservations Program or Tribal Transit Program (TTP), is authorized as 49 U.S.C. 5311(j). The TTP is a set-aside from the Rural Area Formula Program (Section 5311), and consists of a $30 million formula program and a $5 million discretionary grant program. These funds are apportioned directly to Indian tribes. Eligible recipients of TTP program funds include federally recognized Indian tribes, or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs. 49 U.S.C. 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the requirements of the programs. Information collected during the project management stage provides a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

Estimated Annual Burden on Respondents: Approximately 111 hours for each of the 178 respondents.

Estimated Total Annual Burden: 20,882 hours.

Frequency: Annual.

William Hyre,

Deputy Associate Administrator for Administration.

[FR Doc. 2016–07710 Filed 4–4–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2016–0017]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

49 U.S.C. Section 5317—New Freedom Program

DATES: Comments must be submitted before June 6, 2016.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Danielle Nelson, FTA Office of Program Management (202) 366–2160, or email: *danielle.nelson@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5317—New Freedom Program

(*OMB Number: 2132–0565*)

Background: The purpose of the New Freedom program was to make grants available to assist states and designated recipients to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990. The New Freedom program was repealed in 2012 with the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21). However, funds previously authorized for programs repealed by MAP–21 remain available for their originally authorized purposes until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated. To meet program oversight responsibilities, FTA must continue to collect information until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated. Grant recipients are required to make information available to the public and to publish a program of projects which identifies the subrecipients and projects for which the State or designated recipient is applying for financial assistance. FTA uses the information to monitor the grantees' progress in implementing and completing project activities. FTA collects performance information annually from designated recipients in rural areas, small urbanized areas, other direct recipients for small urbanized areas, and designated recipients in urbanized areas of 200,000 persons or greater. FTA collects milestone and financial status reports from designated recipients in large urbanized areas on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws and OMB Uniform Administrative Requirements (Super Circular).

Respondents: State and local government, private non-profit organizations and public transportation authorities.

Estimated Annual Burden on Respondents: 201 hours for each of the respondents.

Estimated Total Annual Burden: 119,229 hours.

Frequency: Annual.

William Hyre,

Deputy Associate Administrator for Administration.

[FR Doc. 2016–07709 Filed 4–4–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2016—FTA–2016–0016]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to renew the following information collection:

Public Transportation Emergency Relief Program

OMB Control No.: 2132–0575.

The Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141) authorized the Emergency Relief Program at 49 U.S.C. 5324. FTA's Emergency Relief program enables FTA to provide assistance to public transit operators in the aftermath of an emergency or major disaster. This program helps States and public transportation systems pay for protecting, repairing, and/or replacing equipment and facilities that may suffer or have suffered serious damage as a result of an emergency, including natural disasters such as floods, hurricanes, and tornadoes. The program can fund capital projects to protect, repair, or replace facilities or equipment that are in danger of suffering serious damage, or have suffered serious damage as a result of an emergency. The program can also fund the operating costs of evacuation, rescue operations, temporary public transportation service, or reestablishing, expanding, or relocating service before, during or after an emergency.

DATES: Comments must be submitted before June 6, 2016.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Schildge, Office of Program Management (202) 366–0778, or email: *adam.schildge@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Background: As a result of Hurricane Sandy, President Obama declared a major disaster in late 2012 for areas of 12 States and the District of Columbia affected by Hurricane Sandy. Public transportation agencies in the counties specified in the disaster declaration were eligible for financial assistance under FTA's Public Transportation Emergency Relief Program.

Under the Disaster Relief Appropriations Act (Pub. L. 113–2), Congress provided $10.9 billion for FTA's Emergency Relief Program for recovery, relief and resilience efforts in areas affected by Hurricane Sandy. Approximately $10.2 billion remained available after implementation of the Balanced Budget and Emergency Deficit Control Act of 2011 (Pub. L. 112–25) and after intergovernmental transfers to other bureaus and offices within DOT. FTA has allocated approximately $9.27 billion in multiple tiers for response, recovery and rebuilding, for locally prioritized resilience projects, and for competitively selected resilience projects. In addition, FTA has reserved approximately $817 million for remaining unfunded recovery expenses.

Respondents: States, local governmental authorities, Indian tribes and other FTA recipients impacted by Hurricane Sandy, which affected mid-Atlantic and northeastern states in October 2012, and particularly devastated transit operations in New Jersey and New York.

Estimated Annual Burden on Respondents: 20.

Estimated Total Annual Burden: 3,600 hours.

Frequency: As necessary.

William Hyre,

Deputy Associate Administrator for Administration.

[FR Doc. 2016–07711 Filed 4–4–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of 4 individuals and 2 entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: OFAC's actions described in this notice were effective on March 31, 2016.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On March 31, 2016, OFAC blocked the property and interests in property of the following 4 individuals and 2 entities pursuant to E.O. 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism":

Individuals

1. MCLINTOCK, James Alexander (a.k.a. AL RASHIDI, Yaqoob Mansoor; a.k.a. AL–RASHIDI, Mohammad Yaqub; a.k.a. AL–RASHIDI, Yaqub Mansoor; a.k.a. MACCLINTOCK, Yakoob; a.k.a. MCLINTOCK, Yaqub; a.k.a. MCLINTOK, James Alexander; a.k.a. UR RASHIDI, Yaqoob Mansoor; a.k.a. "AL SCOTLANDI, Qari"; a.k.a. "AL–SKOTLANDI, Abu Abdullah"; a.k.a. "MANSOOR, Yaqub"; a.k.a. "MOHAMMED, Yaqub"; a.k.a. "YACOUB, Qari"; a.k.a. "YACUB, Qari"; a.k.a. "YAKUB, Qari"; a.k.a. "YAQOOB, Muhammad"; a.k.a. "YAQOOB, Qari"; a.k.a. "YAQUB, Muhammad Qari Maulana"; a.k.a. "YAQUB, Qari"), House 6B, Street 40,, Sector F–10/4, Islamabad, Pakistan; Peshawar, Pakistan; DOB 23 Mar 1964; alt. DOB 22 Mar 1964; POB Borehamwood, Hertfordshire, England, United Kingdom; alt. POB Dundee, Scotland, United Kingdom; nationality United Kingdom; alt. nationality Pakistan; Passport 706309249 (United Kingdom); alt. Passport 40526584 (United Kingdom) issued 10 Nov 2003; alt. Passport 039822418 (United Kingdom); alt. Passport AA1721192 (Pakistan); alt. Passport AA1721191 (Pakistan); National ID No. 6110159731197 (Pakistan); alt. National ID No. 8265866120651 (Pakistan) (individual) [SDGT] (Linked To: LASHKAR E–TAYYIBA; Linked To: TALIBAN; Linked To: AL QA'IDA).

2. SAFARASH, Muhammad Ijaz (a.k.a. ALI, Mohammad Ijaz Safarash; a.k.a. ALI, Mohammad Ijaz Safarish; a.k.a. ALI, Mohammed Ijaz Safarish; a.k.a. ALI, Mohd Ijaz Safarash; a.k.a. ALI, Mohd Ijaz Safrash; a.k.a. ALI, Muhammad Ijaz Safarash; a.k.a. ALI, Muhammed Ijaz Safarash; a.k.a. NASAR, Muhammad Ijaz; a.k.a. NASIR, Muhammad Ajaj; a.k.a. NASSARUDDIN, Muhammad Ajaj; a.k.a. SAFARASH, Mohammad Ijaz; a.k.a. SAFARISH, Mohammed Ejaz; a.k.a. "IJAZ, Muhammad"), Banimalik, Jeddah, Saudi Arabia; T 3814774 Park, Buraydah, Saudi Arabia; DOB 16 Jun 1976; alt. DOB 01 Jan 1976; POB Sialkot, Pakistan; nationality Pakistan; Passport CM9991171 (Pakistan); alt. Passport KF468635 (Pakistan); National ID No. 3460354961173 (Pakistan); alt. National ID No. 30576241062; Residency Number 2168561849 (Saudi Arabia) (individual) [SDGT] (Linked To: LASHKAR E–TAYYIBA).

3. NURISTANI, Abdul Aziz (a.k.a. AL–NURISTANI, 'Abd al-Aziz; a.k.a. AL–NURISTANI, Abdul Aziz; a.k.a. NOORISTANI, Abdul Aziz; a.k.a. NURISTANI, Abdul Aziz-e; a.k.a. "AL-'AZIZ, Abd"; a.k.a. "AZIZ, Abdul"; a.k.a. "AZIZ, Abdullah"), Takal region, Peshawar, Pakistan; DOB 01 Jan 1943 to 31 Dec 1943; POB Du Ab, Nuristan Province, Afghanistan; alt. POB Parun, Nuristan Province, Afghanistan; citizen Pakistan; Passport AK1814292 (Pakistan); alt. Passport AK1814291 (Pakistan) issued 22 Nov 2006 expires 21 Nov 2011; National ID No. 1730190144291 (Pakistan); alt. National ID No. 13743484497 (Pakistan) (individual) [SDGT] (Linked To: LASHKAR E–TAYYIBA; Linked To: AL QA'IDA; Linked To: TALIBAN).

4. QAMAR, Naveed (a.k.a. KHAN, Naveed Qamar; a.k.a. QAMAR, Naved; a.k.a. QAMAR, Navid; a.k.a. QAMAR, Nuwayd), Flat #R9, Nauman Grand Sati, Gulistan Johar, Block 17, Karachi Sharqi, Karachi Province, Sindh, Pakistan; DOB 27 Oct 1971; POB Bahawalnagar, Pakistan; alt. POB Lahore, Punjab Province, Pakistan; nationality Pakistan; Passport ZG4109521 (Pakistan) issued 07 Jun 2008 expires 06 Jun 2013; National ID No. 4220149109527 (Pakistan); alt. National ID No. 35171469484 (Pakistan) (individual) [SDGT] (Linked To: LASHKAR E–TAYYIBA).

Entities

1. AL RAHMAH WELFARE ORGANIZATION (a.k.a. AL RAHMAH WELFARE ORGANISATION; a.k.a. AL RAHMAN WELFARE ORGANISATION; a.k.a. ALRAHMAH WELFARE ORG; a.k.a. ALRAHMAH WELFARE ORGANISATION; a.k.a. AL–REHMAH WELFARE ORGANIZATION; a.k.a. AR RAHMA WELFARE TRUST; a.k.a. AR RAHMAH WELFARE ORGANIZATION; a.k.a. AR RAMMA WELFARE ORGANISATION; a.k.a. AR–RAHMA WELFARE ORGANISATION; a.k.a. AR–RAHMAH WELFARE

ORGANISATION; a.k.a. AR–RAHMAN WELFARE ORGANIZATION; a.k.a. AR–RAHNA WELFARE ORGANISATION; a.k.a. SCOTPAK BUILD PVT LTD; a.k.a. "AL RAHMAN ORGANIZATION"; a.k.a. "AL RAHMAN WELFARE FOUNDATION"; a.k.a. "RWO"), House A, Street 40,, Sector F–10/4, Islamabad, Pakistan; RWO Head Office, House B, Street 40, Sector F–10/4, Islamabad, Pakistan; Jamiah Asma Lil Banaat, New Nadra Office, Lakki Marwat, Pakistan; Near the Mahdi Imami Bohamri Mosque, Sam Kano Moor, Peshawar, Pakistan; Peshawar, Pakistan; Registered Charity No. 2150/5/4129 (Pakistan); alt. Registered Charity No. 749/5/4129 (Pakistan) [SDGT] (Linked To: MCLINTOCK, James Alexander).

2. JAMIA ASARIYA MADRASSA (a.k.a. AL JAMATUL ASARYAH MADRASSA; a.k.a. AL JAMIA AL ASARIA; a.k.a. AL JAMIAH AL ASARIA MADRASSA; a.k.a. AL–JAMAHATUL ASREYA MADRASSA; a.k.a. AL–JAMIA AL–ASARIA MADRASSA; a.k.a. JAMA'AT UL–SARIA MOSQUE; a.k.a. JAMAH–YE SARYA MADRASSA; a.k.a. JAMEAT–UL ASRYA MADRASSA; a.k.a. JAMEHA–E–AL AHSERYA MADRASSA; a.k.a. JAMIA AL–ASSARIA MADRASSA; a.k.a. JAMIA ASRIYA MADRASSA; a.k.a. JAMIA ASSARIA MADRASSA; a.k.a. JAMIAE HAZAREA MADRASSA; a.k.a. JAMIYYA ASRIYYA; a.k.a. MADRASSA JAMIA AL–ASRIA; f.k.a. MADRASSA TALIM QURAN USONA), Inqilab Road, Village Chamkani, Peshawar, Khyber Pakhtunkhwa 25001, Pakistan [SDGT] (Linked To: NURISTANI, Abdul Aziz; Linked To: LASHKAR E–TAYYIBA).

Dated: March 31, 2016.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–07737 Filed 4–4–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form (GMC 6–25–09)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form (GMC 6–25–09), Authorized Cyber Assistant Host Application.

DATES: Written comments should be received on or before June 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Authorized Cyber Assistant Host Application.

OMB Number: 1545–2170.

Form Number: (GMC 6–25–09).

Abstract: The form is used by a business to apply to become an Authorized Cyber Assistant Host. Information on this form will be used to assist in determining whether the applicant meets the qualifications to become a Cyber Assistant Host. Cyber Assistant is a software program that assists in the preparation of Form 1023, Application for Recognition of Exemption under Section 501(c)(3).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or other for-profit organizations and other not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hrs.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 30, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016–07753 Filed 4–4–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–37 (Modified by Revenue Procedure 2004–51)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–37, Reverse Like-Kind Exchanges (modified by Revenue Procedure 2004–51).

DATES: Written comments should be received on or before June 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reverse Like-Kind Exchanges.

OMB Number: 1545–1701.

Revenue Procedure Number: Revenue Procedure 2000–37 (modified by RP 2004–51).

Abstract: Revenue Procedure 2000–37 provides a safe harbor for reverse like-kind exchanges in which a transaction using a "qualified exchange accommodation arrangement" will qualify for non-recognition treatment under section 1031 of the Internal Revenue Code. Revenue Procedure 2004–51 modifies sections 1 and 4 of Rev. Proc. 2000–37, 2000–2 C.B. 308, to provide that Rev. Proc. 2000–37 does not apply if the taxpayer owns the property intended to qualify as replacement property before initiating a qualified exchange accommodation arrangement (QEAA).

Current Actions: There are no changes being made to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 1,600.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–07757 Filed 4–4–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Definition of Contribution in Aid of Construction Under Section 118(c)(§ 1.118–2).

DATES: Written comments should be received on or before June 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulation should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Definition of Contribution in Aid of Construction Under Section 118(c).

OMB Number: 1545–1639.

Regulation Project Number: REG–106012–98 (TD 8936)

Abstract: This regulation provides guidance with respect to section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Reporting Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 30, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016–07812 Filed 4–4–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–GS(T)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–GS(T), Generation-Skipping Transfer Tax Return For Terminations.

DATES: Written comments should be received on or before June 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax Return For Terminations.

OMB Number: 1545–1145.

Form Number: 706–GS(T).

Abstract: Form 706–GS(T) is used by trustees to compute and report the tax due on generation-skipping transfers that result from the termination of interests in a trust. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Number of Response: 1 hour, 22 minutes.

Estimated Total Annual Burden Hours: 684.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–07760 Filed 4–4–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Nonaccrual-Experience Method of Accounting Under Section 448(d)(5).

DATES: Written comments should be received on or before June 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Kerry Dennis at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Nonaccrual-Experience Method of Accounting Under Section 448(d)(5).

OMB Number: 1545–1855. *Regulation Project Number:* TD 9285.

Abstract: This document contains final regulations relating to the use of a nonaccrual-experience method of accounting by taxpayers using an accrual method of accounting and performing services. The final regulations reflect amendments under the Job Creation and Worker Assistance Act of 2002. The final regulations affect qualifying taxpayers that want to adopt, change to, or change a nonaccrual-experience method of accounting under section 448(d)(5) of the Internal Revenue Code (Code).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 24,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–07755 Filed 4–4–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–45

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–45, Highly Compensated Employee Definition.

DATES: Written comments should be received on or before June 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Kerry Dennis, at Internal Revenue Service, room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Highly Compensated Employee Definition.

OMB Number: 1545–1550.

Notice Number: Notice 97–45.

Abstract: Notice 97–45 provides guidance on the definition of highly compensated employee (HCE) within the meaning of section 414(q) of the Internal Revenue Code, as simplified by section 1431 of the Small Business Job Protection Act of 1996, including an employer's option to make a top-paid group election under section 414(q)(1)(B)(ii). The notice requires qualified retirement plans that contain a definition of HCE to be amended to reflect the statutory changes to section 414(q).

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 218,683.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 65,605.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–07756 Filed 4–4–16; 8:45 am]

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Part II

Department of the Interior

Bureau of Ocean Energy Management

30 CFR Part 550
Air Quality Control, Reporting, and Compliance; Proposed Rules

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 550

[Docket ID: BOEM–2013–0081]

RIN 1010–AD82

Air Quality Control, Reporting, and Compliance

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend existing BOEM regulations related to air quality measurement, evaluation, and control with respect to oil, gas, and sulphur operations on the Outer Continental Shelf (OCS) of the United States (U.S.), in the Central and Western Gulf of Mexico (GOM) and the area offshore the North Slope Borough of the State of Alaska, as part of the BOEM approval process for offshore oil and gas exploration and development plans, right-of-use and easement (RUE), pipeline rights-of-way (ROW), and lease term pipeline applications. The proposed rule would: (1) Fulfill BOEM's statutory responsibility under section 5(a)(8) of Outer Continental Shelf Lands Act (OCSLA) by addressing all relevant criteria and major precursor air pollutants and by cross-referencing BOEM standards and benchmarks for those pollutants to those of the United States Environmental Protection Agency (USEPA); (2) change the manner in which lessees would evaluate and model vessel emissions attributed to OCS facilities; (3) change the methods for measuring and evaluating air emissions including measuring their impacts over State submerged lands; (4) provide a process by which exemption thresholds are established and updated; (5) change the circumstances when emission reduction measure(s) (ERM), including Best Available Control Technology (BACT), are required, and establish new criteria for the application of ERM; (6) formalize requirements for the consolidation of emissions from multiple facilities; (7) consistent with BOEM's existing regulatory authority, articulate a schedule and requirements for ensuring that all plans, including those previously approved, will remain compliant on an ongoing basis with these updated regulations; and (8) include an air quality component in the submission of RUE, ROW, and lease term pipeline applications.

Key policy changes include the following: (1) Aligning the list of pollutants that are subject to an air quality review with the current National Ambient Air Quality Standards (NAAQS) and cross-referencing the ambient air quality standards and benchmarks (AAQSB) for those pollutants to those of the USEPA; (2) formalizing the concept and application of the term "attributed emissions;" (3) changing the locations where air emissions will be measured and evaluated; and (4) modifying the process by which exemption thresholds are established and updated. This rulemaking would be the first major re-write of the OCS air quality regulations in 35 years.

DATES: Submit comments on the substance of this rulemaking by June 6, 2016. Send your comments on the substance of the proposed rule to the Department as directed in the **ADDRESSES** section below. Submit comments on the information collection (IC) burden in this rulemaking to the Office of Management and Budget (OMB) by May 5, 2016.

ADDRESSES: You may submit comments, identified by the number 1010–AD82, by any of the following methods:

- *Federal rulemaking portal: http://www.regulations.gov.* Follow the instruction for submitting comments.
- *Mail:* Department of the Interior, Bureau of Ocean Energy Management, Office of Policy, Regulation, and Analysis, Attention: Peter Meffert, 45600 Woodland Road, Sterling, Virginia 20166.
- *Hand delivery:* Front Desk, Department of the Interior, Bureau of Ocean Energy Management, Office of Policy, Regulation, and Analysis, Attention: Peter Meffert, 45600 Woodland Road, Sterling, Virginia 20166.

Please include your name, return address and phone number and/or email address, so we can contact you if we have questions regarding your submission.

Send comments on the IC of this rule to: Interior Desk Officer 1010–AD82, Office of Management and Budget; 202–395–5806 (fax); email *OIRA_Submission@eop.gov.* Please also send a copy to BOEM at 45600 Woodland Road, Sterling, VA 20166.

Public Availability of Comments: BOEM does not consider anonymous comments; please include your name and address as part of your submittal. Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Peter Meffert, Bureau of Ocean Energy Management, Office of Policy, Regulation, and Analysis, at *Peter.Meffert@boem.gov* or mail to 45600 Woodland Road, Sterling, Virginia 20166; or call (703) 787–1610.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
  A. What should I consider as I prepare my comments for BOEM?
  1. Submitting Confidential Business Information (CBI)
  2. Tips for Preparing Your Comments
  B. Availability of Related Information
  C. Abbreviations of Terms and Acronyms
II. Executive Summary
III. Background
  A. Statutory Authority
  B. Current Air Quality Framework—Air Quality Regulatory Program
  C. Air Quality Regulatory Program Data Requirements
  1. Projected Emissions
  2. Maximum Potential Emissions
  3. Processes, Equipment, Fuels, and Combustibles
  4. Distance to Shore
  5. Emission Reduction Measure(s) (ERM)
  6. Non-Exempt Drilling Units
  7. Documentation
  D. Proposed Analytical Approach
  1. Flowchart
  2. Exemption Threshold Analysis
  3. Modeling Analysis
  4. Controls for Short-Term Facilities
  5. Controls for Long-Term Facilities
  6. Protection of Exceptional Natural Resources
  7. Primary and Secondary National Ambient Air Quality Standards (NAAQS) Evaluation
  8. Intersection With the National Environmental Policy Act (NEPA)
  9. Additional Environmental Review
  E. Conclusion
IV. Summary of Key Changes
  A. Air Pollution Emissions Standards
  B. Attributed Emissions
  1. Emissions From Stationary Sources
  2. Emissions From Mobile Support Craft
  3. Determination of Attributed Emissions
  4. Exclusion of Aircraft and Onshore Emissions Sources
  C. Points of Measurement
  1. Point-of-Origin Measurement
  2. State Seaward Boundary (SSB)
  3. Point-of-Impact Measurement
  4. Ambient Air Quality Monitoring
  D. Emission Exemption Threshold(s) (EETs)
  E. Emission Reduction Measure(s) (ERM)
  1. Emissions Credits and Offsets
  2. Applicability of Best Available Control Technology (BACT) Upon an Exceedance of the Significant Impact Levels (SILs)
  3. ERM Evaluation Criteria

4. Nitrogen Oxides (NO_X) Waiver and Volatile Organic Compounds (VOC) Waiver
F. Consolidation of Emissions From Multiple Facilities
G. Ongoing Monitoring and Review of Projected Emissions
1. Recordkeeping and Measurement Criteria
H. Structure of the Proposed Rule
1. Potential Monitoring Alternative
2. Plan Resubmittals
I. Gulf-Wide Offshore Activities Data System (GOADS)
J. Prevention of Significant Deterioration
V. Section-by-Section Analysis of the Proposed Rule
A. 30 Code of Federal Regulations (CFR) Part 550, Subpart A
B. 30 CFR Part 550, Subpart B
C. 30 CFR Part 550, Subpart C
D. 30 CFR Part 550, Subpart J
VI. Interagency, Tribal, and Public Outreach
VII. Legal and Regulatory Analyses
A. Statutes
1. National Environmental Policy Act (NEPA) of 1969
2. Paperwork Reduction Act (PRA) of 1995
3. Regulatory Flexibility Act of 1980
4. Small Business Regulatory Enforcement Fairness Act of 1996
5. Unfunded Mandates Reform Act of 1995
B. Executive Orders (E.O.) and Presidential Memorandum
1. Governmental Actions and Interference With Constitutionally Protected Property Rights (E.O. 12630) March 15, 1988
2. Regulatory Planning and Review (E.O. 12866) October 4, 1993
3. Civil Justice Reform (E.O. 12988) February 7, 1996
4. Protection of Children From Environmental Health and Safety Risks (E.O. 13045) April 21, 1997
5. Federalism (E.O. 13132) August 10, 1999
6. Consultation and Coordination With Indian Tribal Governments (E.O. 13175) November 6, 2000
7. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use (E.O. 13211) May 18, 2001
8. Enhancing Coordination of National Efforts in the Arctic (E.O. 13689) January 21, 2015
9. Improving Regulation and Regulatory Review (E.O. 13563) January 18, 2011
10. Presidential Memorandum of June 1, 1998 on Plain Language in Government Writing

I. General Information

A. What should I consider as I prepare my comments for BOEM?

1. Submitting Confidential Business Information (CBI)

Do not submit CBI or proprietary information to BOEM through *www.regulations.gov* or email. Clearly mark the part or all of the information you claim to be CBI. For CBI information in a disk or CD ROM you mail to BOEM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. Information so marked will not be disclosed.

Any CD or data submitted to BOEM must be virus-free and usable, as submitted. BOEM will not attempt to correct, fix or amend any CD or other electronic media that is not readily accessible.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** (FR) date and page number).
- Organize Comments—When your comments respond to specific provisions, organize your comments by referencing the relevant CFR part or section number in the proposed rule.
- Explain why you agree or disagree, and suggest alternatives, and/or substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data you used.
- Provide specific examples to illustrate your concerns.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Availability of Related Information

A number of documents relevant to this air quality rulemaking, including past and planned environmental studies and analysis, are available on the BOEM Web site at *www.BOEM.gov*. In addition, the economic and environmental analyses associated with this rulemaking are available for inspection and copying in the BOEM docket for this rulemaking, as identified above and are also available at *www.BOEM.gov*.

C. Abbreviations of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

AAI	Ambient Air Increment
AAQSB	Ambient Air Quality Standards and Benchmarks
AEDT	Aviation Environmental Design Tool (Federal Aviation Administration)
AQCR	Air Quality Control Region
AQRP	Air Quality Regulatory Program
AQRV	Air Quality Related Value
AQS	Air Quality Subsystem (USEPA)
BACT	Best Available Control Technology
BC	Black Carbon (component of $PM_{2.5}$)
BLM	Bureau of Land Management
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
Btu IT	British Thermal Unit International Tables
CAA	Clean Air Act, as amended
CAMX	Comprehensive Air Quality Model with Extensions
CBI	Confidential Business Information
CEO	Chief Environmental Officer (BOEM)
CFR	Code of Federal Regulations
CH_4	Methane
CMAQ	Community Multi-scale Air Quality Model (USEPA)
CO	Carbon Monoxide
CO_2	Carbon Dioxide
CP	Criteria Pollutant
CSU	Column-Stabilized Units
DOCD	Development Operations Coordination Document
DOI	Department of the Interior
DPP	Development and Production Plan
EC	Elemental Carbon
ECE	Emission Control Efficiency
EET	Emission Exemption Threshold(s)
EEZ	Exclusive Economic Zone
EIS	Environmental Impact Statement
E.O.	Executive Order
EP	Exploration Plan
ERM	Emission Reduction Measure(s)
FAA	Federal Aviation Administration
FIRE	Factor Information Retrieval System
FLM	Federal Land Manager (Bureau of Land Management (BLM), United States Fish and Wildlife Service (FWS), National Park Service (NPS), and United States Department of Agriculture Forest Service (USFS))
FPS	Floating Production System
FPSO	Floating Production, Storage, and Offloading vessel
FR	Federal Register
FWS	Fish and Wildlife Service (DOI)
GAO	Government Accountability Office
G&G	Geological and Geophysical
GHG	Greenhouse Gas
GOADS	Gulf-wide Offshore Activities Data System
GOM	Gulf of Mexico
H_2S	Hydrogen Sulfide
hp	Horsepower
hpm	Mechanical Horsepower
IC	Information Collection
IRFA	Initial Regulatory Flexibility Analysis
IRIA	Initial Regulatory Impact Analysis
kW	kilowatt
MACI	Maximum Allowable Concentration Increase
MARPOL	International Convention for the Prevention of Pollution from Ships
MODU	Mobile Offshore Drilling Unit
MSC	Mobile Support Craft
NAAQS	National Ambient Air Quality Standards
NEI	National Emissions Inventory (USEPA)
NEPA	National Environmental Policy Act of 1969
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NH_3	Ammonia

NO_2	Nitrogen Dioxide
NO_X	Nitrogen Oxides
N_2O	Nitrous Oxide
NPS	National Park Service (DOI)
NSPS	New Source Performance Standards
NSR	New Source Review (USEPA)
NTC	NO_X Technical Code
NTL	Notice to Lessees
O_3	Ozone
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act of 1953, as amended
OIRA	Office of Information and Regulatory Affairs (Office of Management and Budget)
OMB	Office of Management and Budget (Executive Office of the President)
ONRR	Office of Natural Resources Revenue (DOI)
OSV	Offshore Supply Vessel
Pb	Lead
PEMS	Parametric Emissions Monitoring Systems
PM	Particulate Matter
$PM_{2.5}$	Fine Particulate Matter, 2.5 micrometers in diameter or less
PM_{10}	Particulate Matter, 10 micrometers in diameter or less
PRA	Paperwork Reduction Act of 1995
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
Pub. L.	Public Law
RIA	Regulatory Impact Analysis
ROV	Remotely Operated Vehicle
ROW	Right-of-Way
rpm	Revolutions per minute
RUE	Right of-Use and Easement
SBA	Small Business Administration
SCC	Source Classification Codes
SIL	Significant Impact Level
SMOKE	Sparse Matrix Operator Kernel Emissions
SO_2	Sulphur Dioxide
SOB	Statement of Basis
SO_X	Sulphur Oxides
SIP	State Implementation Plan
SSB	State seaward boundary
TAS	Treatment as State
TIMS-Web	Technical Information Management System Web-based Application
TIP	Tribal Implementation Plan
TLP	Tension-Leg Platforms
tpy	Tons per year
TSP	Total Suspended Particulates
U.S.	United States
USCG	United States Coast Guard
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency
USGS	United States Geological Survey
VOC	Volatile Organic Compound
$\mu g/m^3$	Micrograms per cubic meter

II. Executive Summary

The Outer Continental Shelf Lands Act (OCSLA) requires the Department of the Interior (DOI) to promulgate regulations for compliance with the National Ambient Air Quality Standards (NAAQS) pursuant to the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*), to the extent that activities approved under OCSLA significantly affect the air quality of any State (43 U.S.C. 1334(a)(8)). The U.S. Geological Survey (USGS), a BOEM predecessor agency, prepared the first air quality regulations under OCSLA, which were promulgated by the Secretary of the Interior in 1980 (45 FR 15128, March 7, 1980). The current version of these regulations is contained in 30 CFR part 550 ("Oil, Gas and Sulphur Operations in the Outer Continental Shelf") subparts A ("General"), B ("Plans and Information"), and C ("Pollution Prevention and Control"). These regulations require: (1) The submission of information on projected air emissions from offshore oil and gas exploration or development activities with a proposed plan for exploration (*i.e.*, an exploration plan (EP)) or development (*i.e.*, a Development and Production Plan (DPP) or a Development Operations Coordination Document (DOCD)); (2) the application of various emission exemption thresholds to determine whether air quality impacts would be presumed *de minimis* and, therefore, not require further BOEM review under subpart C or whether the impacts would exceed the threshold and require further review under subpart C; (3) the modeling of projected emissions when a facility's projected emissions exceed the exemption thresholds and would therefore potentially cause air quality impacts to a State;[1] and, (4) the control of an emissions source proposed for any facility that would cause or contribute to an exceedance of the AAQSB.

BOEM is proposing to revise and replace its air quality regulations with a new set of regulations that reflect a number of policy changes with respect to the existing air quality regulatory program (AQRP (30 CFR 550 subpart C)). While the existing underlying framework would remain the same in a number of key aspects, the proposed rule would change in significant ways the manner in which BOEM regulates emissions from certain sources on the OCS. The most significant changes in the proposed rule relate to: (1) Fulfilling BOEM's statutory responsibility under section 5(a)(8) of OCSLA by addressing all relevant criteria and major precursor air pollutants and by cross-referencing the AAQSB for those pollutants to those of the USEPA; (2) formalizing the concept and application of the term "attributed emissions;" (3) changing the methods for determining the locations from which air emissions will be measured and evaluated; (4) modifying the process by which emission exemption thresholds (EETs) are established and updated; (5) changing the circumstances when ERM, including Best Available Control Technology (BACT), are required, and establishing new criteria for the application of ERM; (6) revising the boundary at which BOEM determines air quality compliance to the State seaward boundary (SSB), rather than the coastline; (7) formalizing requirements for the consolidation of emissions from multiple facilities; (8) consistent with BOEM's existing regulatory authority, articulating a schedule for ensuring that plans, including previously approved plans, will be compliant with these updated regulations; (9) adding an air quality component to the submission of RUE, ROW, and lease term pipeline applications; (10) an expanded use of offsets as an alternative in circumstances where BACT was previously required; and (11) the addition of a new requirement for all plans to be reviewed at least every 10 years, to ensure ongoing compliance with the NAAQS, as amended from time to time.

BOEM is proposing to amend the current regulations to provide a mechanism by which the regulations remain up-to-date in the future, particularly when the USEPA changes an applicable AAQSB; to reflect the recent statutory expansion of BOEM's air quality jurisdiction (42 U.S.C. 7627, as amended by Pub. L. 112–74); to improve the clarity of existing regulatory provisions; to account for technological advances in air quality measurement, evaluation, and reporting that have occurred since the current regulations were promulgated; and to reflect industry practices and procedures that have evolved since 1980.

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[1] In the 1990 Clean Air Act Amendments, Congress added two provisions authorizing Federally-recognized Indian tribes to be treated like States under the CAA. Congress added section 301(d) that authorizes the Administrator of the USEPA "to treat Indian tribes as States." In implementing this provision, the USEPA published proposed rule entitled "the Tribal Clean Air Act Authority" to implement this provision of the Act. In its proposed rule (63 FR 7271, Feb. 12, 1998), the USEPA stated "[The] Regulations in this part identify those provisions of the Clean Air Act for which Indian tribes are or may be treated in the same manner as States. In general, these regulations authorize eligible tribes to have the same rights and responsibilities as States under the Clean Air Act and authorize EPA approval of tribal air quality programs meeting the applicable minimum requirements under the Act." Furthermore, in its "EPA Statement of Policy on Consultation and Coordination with Indian Tribes," dated May 4, 2011, on p. 3 in the section entitled Guiding Principles, the USEPA states: "EPA recognizes and works directly with Federally-recognized tribes as sovereign entities with primary authority and responsibility for each tribe's land and membership, and not as political subdivisions of states or other governmental units." Just as States establish State Implementation Plans (SIPs) to comply with CAA/USEPA requirements, the tribes can establish Tribal Implementation Plans (TIPs) to regulate the air quality over tribal lands (which are then outside the general jurisdiction of the State SIP). In addition, for those tribes that have been granted "treatment as State" (TAS) status (*i.e.*, providing for Indian tribes to play essentially the same role in Indian country that states do within State lands for purposes of air quality management), BOEM will allow such a tribe to appeal the approval of a plan, in a manner similar to that accorded to States. For this reason, BOEM has proposed to expand the analysis of impacts under its air quality rules to include potential impacts to Federally-recognized Indian tribes having either TAS status or an approved TIP.

BOEM is proposing to define a number of additional key terms, to clarify the objectives and procedures associated with the AQRP, and to reorganize a number of existing provisions in its regulations. The proposed rule would consolidate all the existing data collection and information requirements in a single section dedicated to air quality. The pertinent provisions of BOEM's regulations related to air quality would be either substantially updated or entirely replaced.

The proposed rule would make a number of changes to the existing requirements associated with reporting, tracking, modeling, and monitoring the air emissions from stationary facilities operating on the OCS and emissions from associated non-stationary sources, including vessels and vehicles, and aircraft traversing above the OCS or over State submerged lands [2] that operate in support of such facilities.

Since BOEM's current air quality regulations were published in 1980, the USEPA has revised the NAAQS to include additional criteria pollutants (*i.e.*, to include Fine Particulate Matter, 2.5 micrometers in diameter or less ($PM_{2.5}$)), standards with a wider range of averaging times and statistical forms.[3] There are two types of NAAQS: Primary NAAQS, which are intended to protect public health with an adequate margin of safety; and secondary NAAQS, which are focused on protecting public welfare.

This proposed rule would enhance the process by which operators of OCS facilities determine whether their proposed exploratory or developmental activities could cause or contribute to a significant adverse impact to the air quality of any State. It would define the circumstances under which BOEM would require lessees and operators [4] to control their air emissions in order to meet the USEPA's air pollution control-related standards for criteria air pollutants (*i.e.*, pollutants for which there are NAAQS) and major precursor air pollutants. The proposed rule would incorporate by reference USEPA's Significant Impact Levels (SILs), Ambient Air Increments (AAIs), and the primary and secondary NAAQS. It would also make a number of changes to ensure that certain provisions within BOEM's rules are automatically updated whenever the USEPA updates its NAAQS, SILs and AAIs.

Because the USEPA's current NAAQS include standards for both annual and short-term averaging times, the proposed rule would also provide for the collection, evaluation, and consideration of data with respect to the long-term and short-term exposure to air pollution originating from the OCS. Under current BOEM regulations, most of the effects that are evaluated relate to an annual exposure to a certain level of pollution. Short-term averaging times measure something different, namely the potential impact of a short-term exposure to the same pollutant, where the level of pollution is much greater. In some cases, the long-term exposure to low levels of pollution may be harmful; in other cases, the short-term exposure to high levels of pollution may also be harmful. Because the proposed rule would evaluate different levels of exposure over different time periods, the proposed rule would more accurately determine whether any OCS operations would have the potential to cause an adverse effect to a State's air quality. The proposed rule would require the modeling of emissions over any averaging time that the USEPA has determined would be relevant whenever the projected annual emissions of a given pollutant exceed the EETs. This change would, therefore, enable BOEM to better ensure compliance with all the NAAQS. This change is of particular relevance in the case of nitrogen oxides (NO_X) because that air pollutant is the one for which the annual exemption threshold is most often exceeded.

In order to ensure ongoing compliance with the NAAQS referenced in OCSLA, the proposed rule would also provide for the collection of additional information on approved activities described in any initial, revised, modified, resubmitted, or supplemental EP, DPP, or DOCD, or application for a RUE, pipeline ROW, or lease term pipeline (hereinafter referred to by the general term "plan"), in order to verify the information reported in the plan. As is the case with the current BOEM regulations, the proposed rule would establish emissions exemptions thresholds. The proposed rule would continue to require facilities whose projected emissions of criteria and major precursor pollutants would exceed the thresholds to model those emissions in order to determine whether such emissions could potentially cause the air quality of any State to exceed the NAAQS.

To ensure that OCS operations do not cause any such impact to the air quality of a State, the proposed rule would require large emitters of air pollutants, namely, those whose facilities exceed BOEM's EETs—not only to project their emissions in their plan, but also to demonstrate that their actual emissions do not exceed their projected emissions (as contained in their original plan). To ensure ongoing compliance, three major new procedures have been proposed. First, under the proposed rule, if the USEPA revises any AAQSB that applies (NAAQS, or any applicable SIL, or AAI), BOEM would examine the appropriateness of its EETs, and, BOEM, at its discretion, would periodically revise its EETs for the air pollutant(s) corresponding to USEPA's revision(s). Second, certain large emitters would be required to develop a method for measuring and reporting their emissions to demonstrate their actual emissions do not exceed the original projections upon which approval was granted. Third, starting in 2020,[5] all lessees and operators with previously approved plans would be required to update their plans with then current emissions data, and BOEM would re-evaluate all of these updated plans against the current EETs and for compliance with current AAQSB, according to a schedule proposed in 550.310(c)(2). All lessees and operators that submit plans would be required to include up-to-date emissions data in their plans to ensure they comply with then current AAQSB.

Although BOEM does not issue air quality permits and instead reviews air emissions in the context of its AQRP, BOEM recognizes that a one-time review of a particular facility's compliance with AAQSB may not be adequate to ensure that the facility does not cause or contribute to a violation of the NAAQS within a State. USEPA periodically updates the NAAQS and adds new averaging times and statistical forms for the various indicator pollutants. Measurement and evaluation techniques and methods are expected to improve over time. Equipment ages and becomes less efficient as it does so. The types and characteristics of support vessels, vehicles and aircraft may change. For these and various other reasons, BOEM has proposed that evaluating a plan's effectiveness more than once may aid BOEM in ensuring "compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under [OCSLA] significantly affect the air quality of any State" (43 U.S.C. 1334(a)(8)). Consistent with the requirement in every offshore lease that lessees and operators are required to comply with changes to the regulations, as they are refined, BOEM is proposing plans be reevaluated periodically for air quality purposes.[6]

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[2] State submerged lands are the part of each State's territory that extends from the shoreline up to the point of federal jurisdiction (typically three miles from shore, but in some cases extending up to nine miles from shore). In contrast, the offshore lands under federal jurisdiction are referred to as the Outer Continental Shelf (OCS).

[3] In general, air quality standards are based on the concentration of a given pollutant at a given location averaged over a particular length of time, called the averaging time, evaluated in combination with some statistical parameter, which is referred to as the statistical form of the standard.

[4] Although the rule refers to lessees or operators, the provisions of the proposed rule would also apply to right-of-way holders, right-of-use and easement holders, lease-term pipeline applicants and any other party or parties that may be required to submit a plan to BOEM for review and approval.

[5] BOEM is proposing this date because BOEM expects that it will have completed the studies to set new EETs by that time.

Finally, this rule proposes to codify the existing mechanism BOEM uses in the GOM OCS Region to report ongoing emissions information (*i.e.*, the Gulf-wide Offshore Activities Data System or GOADS, as described in Notice to Lessees and Operators ([NTL], BOEM NTL No. 2014–G01) and apply it to all OCS regions under BOEM air quality jurisdiction. This information is important to ensure that OCS activities authorized by BOEM do not cause any State to exceed the NAAQS. BOEM also uses this information in its National Environmental Policy Act (NEPA) documents at several stages of the OCS leasing and plan review and approval process. In addition, BOEM shares this data with the USEPA to enhance its national emissions inventory (NEI), and with States and local air quality management agencies for the development of State Implementation Plans (SIPs). In-addition, BOEM collects emissions information related to Greenhouse Gases (GHGs) on a regular basis as part of the GOADS program and provides this information to lessees and operators to facilitate their reporting to the USEPA.

III. Background

A. Statutory Authority

OCSLA grants DOI authority to issue leases for the development of the nation's energy and mineral resources on the OCS. The U.S. OCS extends from three to nine nautical miles (nm) offshore (this varies by State) to the extent of U.S. claimed jurisdiction and control, which is 200 nm or more from the coastal States' baseline.[7] BOEM makes OCS resources available for expeditious and orderly development through leasing, subject to environmental safeguards, in a manner that is consistent with the maintenance of competition and other national needs (43 U.S.C. 1332(3)). In 1978, OCSLA was amended to include a requirement for DOI to promulgate regulations for "compliance with the national ambient air quality standards pursuant to the CAA (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under [OCSLA] significantly affect the air quality of any State" (43 U.S.C. 1334(a)(8)). In 1980, the USGS, a BOEM predecessor agency responsible for overseeing OCS energy and mineral activity, promulgated air quality regulations for activities authorized on the entire OCS, which are now BOEM's air quality regulations.

In 1990, Congress amended section 328 of the CAA and transferred authority to regulate air emissions on the OCS, other than in the Central and Western GOM, from DOI to the USEPA. In 2011, Congress again amended section 328 to transfer the authority for regulating air emissions from the USEPA back to DOI for those parts of the OCS adjacent to the North Slope Borough of the State of Alaska. As of the publication of this proposed rule, DOI's jurisdiction for ensuring compliance with the NAAQS pursuant to the CAA includes OCS areas adjacent to Texas, Louisiana, Mississippi, Alabama, and the North Slope Borough of the State of Alaska.

B. Current Air Quality Framework—Air Quality Regulatory Program

Congress has geographically divided air quality regulatory authority for authorized OCS activities between the USEPA and BOEM, based upon where those activities occur on the OCS. While the overall objectives of BOEM's and the USEPA's air quality regulations are similar, there are differences in each agency's statutory authority and differences in the way each agency implements its statutory charge. The USEPA implements its charge through permitting (CAA Sections 165 and 173). The CAA directs the USEPA to establish requirements to control air pollution from sources on the OCS to attain and maintain federal and State ambient air quality standards and to comply with the provisions of part C of subchapter I of the CAA (CAA Section 328(a)). USEPA regulations for permitting OCS sources "ensure that there is a rational relationship to the attainment and maintenance of federal and State ambient air quality standards and the requirements of part C of title I, and that the rule is not used for the purpose of preventing exploration and development of the OCS" (40 CFR 55.1). The USEPA's OCS air quality regulations incorporate requirements derived from other areas of the CAA and USEPA regulations and for sources within 25 miles of the State boundary require compliance with local rules as if the source were located onshore, the result of which is that operators must demonstrate compliance with several different types of requirements.

BOEM's jurisdiction under 43 U.S.C. 1334(a)(8) requires BOEM to promulgate regulations "for compliance with the national ambient air quality standards pursuant to the [CAA] . . . to the extent that activities under OCSLA significantly affect the air quality of any State." Thus, regulations implementing this section regulate offshore emissions specifically to protect State air quality rather than protecting air quality above the OCS generally. Upon submission by a lessee or operator of a plan, BOEM will determine whether the plan is consistent with the OCSLA and BOEM's regulations. If BOEM determines that a plan is inconsistent with OCSLA or BOEM's regulations, BOEM will require modifications of the plan as necessary to achieve consistency. BOEM may approve, require modification of, or disapprove an EP. BOEM can disapprove an EP only if there are no possible modifications that would avoid "serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment," as described in 43 U.S.C. 1334(a)(2)(A)(i). With respect to a DPP or a DOCD, BOEM must approve, disapprove, or require modification of the plan after conducting a compliance review, which includes compliance with the regulations implementing section 1334(a)(8). In addition, the timing of BOEM's decisions is also circumscribed by the provisions of OCSLA. Under OCSLA, BOEM is required to approve a plan within 30 days for an EP or within 60 days for a DPP or DOCD, if BOEM finds that the plan is consistent with OCSLA and its implementing regulations, including those ensuring air quality compliance under section 5(a)(8) of OCSLA. (See 43 U.S.C. 1340(c) and 1351(h)).

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[6] See § 550.310(c)(2), below, of the proposed rule text.

[7] The official U.S. coastal baseline is recognized as the low-water line along the coast in accordance with the articles of the United Nations Convention on the Law of the Sea, art. 76, Dec.10, 1982, 1833 U.N.T.S. 3, 428. The territorial sea extends seaward 12 nautical miles (nm) from the baseline. The Exclusive Economic Zone (EEZ) extends from the outer boundary of territorial sea seaward to 200 nm. The continental shelf begins at 12 nm, includes the EEZ and may extend further. The U.S. OCS extends from the SSB to the extent of the continental shelf. See 43 U.S.C. 1331(a); see also 43 U.S.C. 1301.

BOEM's predecessor, USGS, developed the current air quality regulatory framework in 1980 to address potential onshore air quality impacts of OCS operations on adjacent States. These regulations require lessees or operators to submit information on projected air emissions in their proposed EPs, DPPs and DOCDs. BOEM considers air emissions information submitted by lessees and operators as one component of its review of the overall exploration or development plan. The regulatory process by which BOEM evaluates the submitted emissions information is referred to in this document as BOEM's AQRP. The 1980 regulations first established a process for determining whether the potential air quality impacts from any given plan are low enough that they should be exempt from further air quality regulatory analysis. Plans that do not exceed these EETs are generally exempt from further analysis. For plans that exceed these exemption thresholds, BOEM regulations require lessees and operators to conduct modeling intended to help BOEM determine whether emissions from any facility could cause an exceedance of the AAIs or NAAQS onshore, and if so, what mitigation (*i.e.*, emissions reduction) measures, if any, BOEM should impose on those proposed exploration and development activities to reduce the potential impacts to affected States.

BOEM conducts its AQRP analysis whenever a lessee or operator proposes new exploration, development, or production operations on the OCS or submits a revised or supplemental plan, which would modify operations in a manner that could cause an increase in the release of regulated pollutants above the amounts described in a previously approved plan. The AQRP focuses on the impact of emissions from a specific exploration or development and production project and its potential onshore impacts on air quality. The AQRP does not directly regulate OCS air quality, since 43 U.S.C. 1334(a)(8) requires BOEM to focus its plan review on the potential impacts to the air quality of the States. The AQRP consists of a quantitative review of specific air quality data that informs a decision to approve, require modification of, or disapprove a specific plan. Any modifications BOEM requires as a result of the AQRP review become an enforceable provision of the approved plan. As BOEM fulfills its statutory obligation, its AQRP also achieves other objectives: (1) To protect public health from adverse air quality effects; (2) to protect public welfare by preventing a deterioration in the air quality of the environment (*e.g.*, to protect crops, forests, and wildlife); (3) to prevent the formation of new designated non-attainment areas; and, (4) to preserve and prevent degradation of the air quality in national parks and other areas of special natural, recreational, scenic, or historic value. In practical terms, this is accomplished by assessing whether OCS operations and activities will advance these objectives. The AQRP is one factor that BOEM considers in making a determination on the overall plan.

The AQRP analysis is intended to account for emissions of pollutants considered harmful to public health and the environment from facility and associated support craft. The plan must include descriptions of all relevant emissions sources—offshore, stationary and nonstationary, and certain onshore ones—regardless of whether they are intended to be used on a short-term or long-term basis, and regardless of attainment status. As part of the AQRP analysis, BOEM currently evaluates the emissions of most pollutants that the USEPA has designated as NAAQS "criteria pollutants" (CPs) in the USEPA's air quality regulatory scheme. The USEPA currently defines the following six pollutants as CPs: Carbon monoxide (CO); nitrogen dioxide (NO_2); sulphur dioxide (SO_2); ozone (O_3); particulate matter (PM); and lead (Pb). BOEM evaluates air emissions using the NAAQS as a standard because OCSLA provides that BOEM must ensure compliance with the NAAQS (43 U.S.C. 1334(a)(8)). At the time the current regulations were promulgated, BOEM's predecessor, USGS, determined that Pb was generally not released in sufficient quantities from offshore oil and gas operations to warrant a separate analysis, and so BOEM does not currently review Pb data as part of the AQRP. Also, as of 1980, the USGS had determined that there was no way to review O_3 formation directly, but it instead decided to regulate O_3 formation indirectly, through the tracking of O_3 precursor pollutants, volatile organic compounds (VOCs) and NO_X.

In addition to regulating CPs, BOEM currently regulates most of the major precursor pollutants that lead to the formation of the CPs. Some CPs are also precursors for other CPs. For example, USEPA has identified SO_2 as a precursor to the formation of $PM_{2.5}$, which is PM that is 2.5 micrometers in diameter or less, and both are CPs. BOEM's current regulations address two precursor pollutants of ozone, NO_X and VOCs. Ammonia (NH_3) is not currently covered by BOEM's regulations but is proposed to be regulated in this proposed rule, because it may be regulated under the Clean Air Act as a precursor pollutant to the formation of $PM_{2.5}$.

The USEPA has found that GHG[8] emissions endanger the public health and welfare (74 **Federal Register** (FR) 66496, Dec. 15, 2009). BOEM recognizes that the continued and prospective emissions of GHGs from offshore oil and gas operations will contribute to global GHG concentrations.[9] The goal of this rule, however, is to implement Section 5(a)(8) of OCSLA, which requires BOEM to regulate air quality so as not to allow exceedances of the NAAQS in any State. While GHGs are not regulated under the NAAQS and are currently being addressed by the USEPA through other sections of the CAA, climate change itself impacts air quality, particularly ground-level ozone, and has consequential health impacts associated with poor air quality.[10] However, because GHGs are not regulated under the NAAQS, Section 5(a)(8) of OCSLA specifically is not the appropriate statutory vehicle to address the harm that GHGs cause and BOEM is not proposing to address the issue of GHG emissions in this proposed rule.

The Bureau, however, is still interested in addressing GHGs consistent with its legal authorities. Lessees and operators currently submit to the NEI the results of BOEM's calculation of GHG information as part of GOADS, and GHG emissions are considered as part of the NEPA review of lease sales and post-lease approvals. In the coming months, BOEM will engage stakeholders regarding potential avenues to address GHG emissions, as appropriate, either through a separate rulemaking or some other action.

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[8] GHGs are defined by the USEPA as the aggregate group of the following six greenhouse gases: Carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6). See, *e.g.*, 40 CFR 52.21(b)(49)(i).

[9] More recently, in the preamble to its proposed new source performance standards for the oil and gas industry, the USEPA provided an update regarding the climate change impacts that result from GHG emissions (80 FR 56593, 56602, Sept. 18, 2015). Many of the numerous impacts identified by the USEPA, such as increased severity of storms, increased water pollution (including ocean acidification), rising sea levels, loss of sea ice, and habitat loss, relate to coastal areas and the natural resources of the OCS. Both the 2009 endangerment finding and the recent proposed new source performance standards underscore that these impacts will exacerbate ongoing environmental pressures in Alaska, and will particularly impact Alaska native communities.

[10] See 74 FR 66496 (No. 239, December 15, 2009), "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," or the United States Global Change Research Program (USGCRP) National Climate Assessment, available at *http://nca2014.globalchange.gov/report* or the Intergovernmental Panel on Climate Change (IPCC) reports available at *http://www.ipcc.ch/*.

Separate but related to the GHG issue is the matter of black carbon (BC) dispersion and deposition in Alaska and other parts of the Arctic, which is an environmental concern. BC is a component of $PM_{2.5}$, and as such would be a component of a CP that will be regulated under the proposed rule.[11] The ambient concentrations of $PM_{2.5}$, including BC, would be considered in any analysis of the pre-existing background pollution levels before any plan could be approved for development on the OCS. Recent scientific studies [12] have indicated that BC can be a source of negative health effects.[13]

BOEM is actively investigating this issue and our evaluation of the potential impacts of BC and a determination of appropriate controls is continuing to evolve. BOEM and the USEPA are coordinating their efforts on this matter.

In addition to the health effects associated with the $PM_{2.5}$ emissions that include BC, there are also potentially significant implications to climate change and global warming from BC. These relate primarily to three factors: (1) BC particles directly absorb sunlight and reduce the planetary albedo [14] when suspended in the atmosphere; (2) BC absorbs incoming solar radiation, disturbs the temperature structure of the atmosphere, and influences cloud cover; and (3) when deposited on high albedo surfaces like ice and snow, BC particles reduce the total surface albedo [15] available to reflect solar energy back into space. Small initial snow albedo reduction may have a large radiative forcing effect [16] because of a positive feedback: Reduced snow albedo increases surface temperatures and the increased surface temperature decreases the snow cover and further decreases surface albedo.[17]

While BOEM does not currently have sufficient data to support a specific limit on BC, the exemption thresholds research study currently underway for the Gulf of Mexico (which is described in detail in section III.D.1, under the heading of "Exemption Threshold Analysis") will analyze BC as part of the overall review. The study will apply the Community Multi-scale and Air Quality (CMAQ) Model and the Comprehensive Air Quality Model with Extensions (CAM_X) photochemical grid models, as part of the analysis. PM emissions specified in the emissions inventory will be allocated to individual PM species [18] as part of the Sparse Matrix Operator Kernel Emissions (SMOKE) emissions processing and modeling system [19] using PM speciation factors obtained from USEPA's SPECIATE database [20] for each source category (as defined by the Source Classification Code (SCC)). This evaluation will result in PM mass being broken into the mass associated with elemental carbon (EC), organic carbon, and other elements, as well as particle bound VOCs, such as polycyclic aromatic hydrocarbons. BC is essentially equivalent to the EC portion of PM. CMAQ [21] and CAM_X [22] model projections of EC will be calculated and modeled for further analysis. This will be done both for the domain defined for the study (*see* section III.D.1), and for specific sources. Two other models commonly used by the industry and BOEM to evaluate air quality, AERMOD [23] and CALPUFF,[24] are being considered for use and will apply a similar technique to apportion $PM_{2.5}$ mass for a BC analysis.

BOEM requests comments and data on the extent of BC emissions from OCS-related operations and potential means of reducing such emissions and their negative effects. BOEM also requests comment on other factors, information, or data that BOEM should consider in its analysis of BC, either in connection with or in addition to its air quality regulatory analysis.

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[11] Black carbon is not classified as a unique CP and the USEPA does not directly regulate its emissions other than as a component of $PM_{2.5}$.

[12] For example, "Black Carbon Exposures, Blood Pressure, and Interactions with Single Nucleotide Polymorphisms in MicroRNA Processing Genes," in Environmental Health Perspectives, 118:943–948 (2010), and "Long-Term Exposure to Black Carbon and Carotid Intima-Media Thickness: The Normative Aging Study" in Environmental Health Perspectives, 121:1061–1067 (2013). Web addresses for these studies described are at: *http://www.jstor.org/stable/27822949?seq=1#page_scan_tab_contents* and *http://dash.harvard.edu/handle/1/11877015*.

[13] Based on an assessment of the scientific evidence for health effects associated with exposures to ambient PM, in the most recent review of the NAAQS for PM, the USEPA concluded that "many constituents of PM can be linked with differing health effects and the evidence is not yet sufficient to allow differentiation of those constituents or sources that are more closely related to specific health outcomes" (PM Integrated Science Assessment (ISA), section 2.4.4).

[14] Albedo is the fraction of solar energy (shortwave radiation) reflected from the Earth back into space. It is a measure of the reflectivity of the earth's surface. Ice, especially with snow on top of it, has a high albedo: Most sunlight hitting the surface bounces back towards space.

[15] Total surface albedo is the diffuse reflectivity or reflecting power of a surface. It is the ratio of reflected radiation from the surface to incident radiation upon it. In this case, the reduction in total surface albedo would represent the reduction in albedo that is caused by the relevant OCS operations in the vicinity of the project or development that is generating BC emissions.

[16] Radiative forcing or climate forcing is defined as the difference of insolation (sunlight) absorbed by the Earth and energy radiated back to space.

[17] Mollie Bloudoff-Indelicato (January 17, 2013). "A Smut Above: Unhealthy Soot in the Air Could Also Promote Global Warming: Atmospheric black carbon is not only bad for the lungs, but can also act as greenhouse particles under certain circumstances." Scientific American. January 22, 2013.

IPCC, Changes in Atmospheric Constituents and in Radiative Forcing, in Climate Change 2007: The Physical Science Basis. Contribution Of Working Group I To The Fourth Assessment Report Of The Intergovernmental Panel On Climate Change 129, 132 (2007), available at *http://www.ipcc.ch/ipccreports/ar4-wg1.htm*. (Magnitudes and uncertainties added together, as per standard uncertainty rules).

V. Ramathan and G. Carmichael, Global and regional climate changes due to black carbon, 1 NATURE GEOSCIENCE 221–22 (23 March 2008) ("The BC forcing of 0.9 W m–2 (with a range of 0.4 to 1.2 W m–2) . . . is as much as 55% of the CO_2 forcing and is larger than the forcing due to the other GHGs such as CH_4, CFCs, N_2O or tropospheric ozone.").

[18] There are many forms of PM. The U.S. National Research Council has emphasized the importance of examining the risk of PM species ("Research Priorities for Airborne Particulate Matter: IV: Continuing Research Progress." Washington, DC, National Research Council, 2004). Determining the differential toxicity of $PM_{2.5}$ species and identifying species with greatest toxicity is of great importance to emission-control strategies and regulations. These investigations have reported numerous components that may be responsible for particle toxicity, such as elemental and organic carbon, sulfate, nitrate, and metals including zinc, nickel, iron, potassium, and chromium.

[19] See the following site for additional information on the SMOKE modeling system: *https://cmascenter.org/smoke/*.

[20] SPECIATE is the USEPA's repository of volatile organic gas and PM speciation profiles of air pollution sources. For additional information, see: *http://www.epa.gov/ttnchie1/software/speciate/*.

[21] Further information on CMAQ is available at: *http://www.fhwa.dot.gov/environment/air_quality/cmaq/*.

[22] Further information on CAMX is available at: *http://www.camx.com/*.

[23] AERMOD is described in detail in the publication, "AERMOD: DESCRIPTION OF MODEL FORMULATION," U.S. Environmental Protection Agency, EPA–454/R–03–004, September 2004, available at: *http://www.epa.gov/scram001/7thconf/aermod/aermod_mfd.pdf*.

[24] CALPUFF is an advanced non-steady-state meteorological and air quality modeling system adopted by the USEPA in its Guideline on Air Quality Models as the preferred model for assessing long range transport of pollutants and their impacts on federal Class I areas and on a case-by-case basis for certain near-field applications involving complex meteorological conditions. Further information on this model is available at: *http://www.src.com/*.

C. Current Air Quality Regulatory Program Data Requirements

As explained above, BOEM's AQRP review, conducted under existing regulations at 30 CFR part 550 subparts B and C, is triggered when a lessee or operator submits or resubmits an exploration or development plan. With respect to air quality, BOEM currently requires the submitter to provide the following information:

1. Projected Emissions

Under existing BOEM regulations, the lessee or operator must provide tables showing the projected air emissions of all regulated criteria and major precursor pollutants, except $PM_{2.5}$, Pb, and O_3,[25] generated by the submitted plans. In addition, for each source for each pollutant, lessees must identify: The projected hourly emissions rate in peak pounds per hour; the total projected annual emissions in tons per year (tpy); the frequency and duration of projected emissions; and all projected emissions over the duration of the plan (*i.e.*, for as many years as the operations will continue).

2. Maximum Potential Emissions

The lessee or operator must base all of its projected air emissions identified in (1) above on the maximum rated capacity of the equipment on the plan's drilling unit or facility.

3. Processes, Equipment, Fuels, and Combustibles

The lessee or operator must provide a description of processes, processing equipment, combustion equipment, fuels, and storage units, including the characteristics and the frequency, duration, and maximum burn rate of any well test fluids to be burned.

4. Distance to Shore

The lessee or operator must provide the distance between any given facility and the closest shoreline of an adjacent State.

5. Emission Reduction Measures (ERM)

Each lessee or operator must describe any proposed air emission reduction measures (ERM), including a description of the relevant source(s), the emission reduction control technologies or procedures, the quantity of reductions to be achieved, and any monitoring system proposed to measure emissions.

6. Reductions in Emissions From Non-Exempt Drilling Units

The lessee or operator must provide a description of how the lessee or operator intends to address the emissions generated, if emissions from the plan are greater than the lessee's or operator's respective emission-exemption amounts and if modeling indicates that some form of emissions reductions will be necessary.

7. Documentation

The lessee or operator must document the basis for all of its calculations, including engine size, rating, and applicable operational information. In the GOM region, BOEM and industry have historically used worksheets contained in forms BOEM–0138 (Gulf of Mexico Air Emissions Calculations for EPs) and BOEM–0139 (Gulf of Mexico Air Emissions Calculations for DOCDs) for air quality information.

D. Proposed Analytical Approach

1. Flowchart

The following flow chart illustrates the analytical approach that a lessee or operator would use to evaluate its projected emissions under this proposed rule. The flow chart is intended for informational purposes only. In any circumstances where the flow chart may be interpreted to conflict with the regulatory text, the regulatory text is controlling.

[See attached flowchart]

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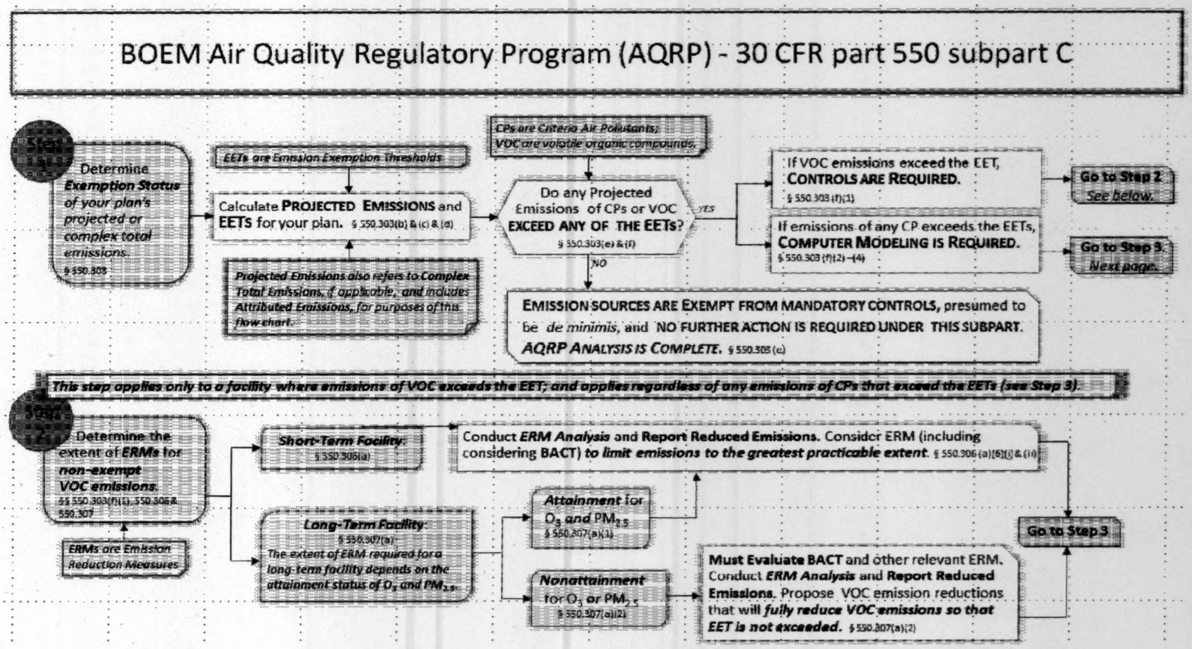
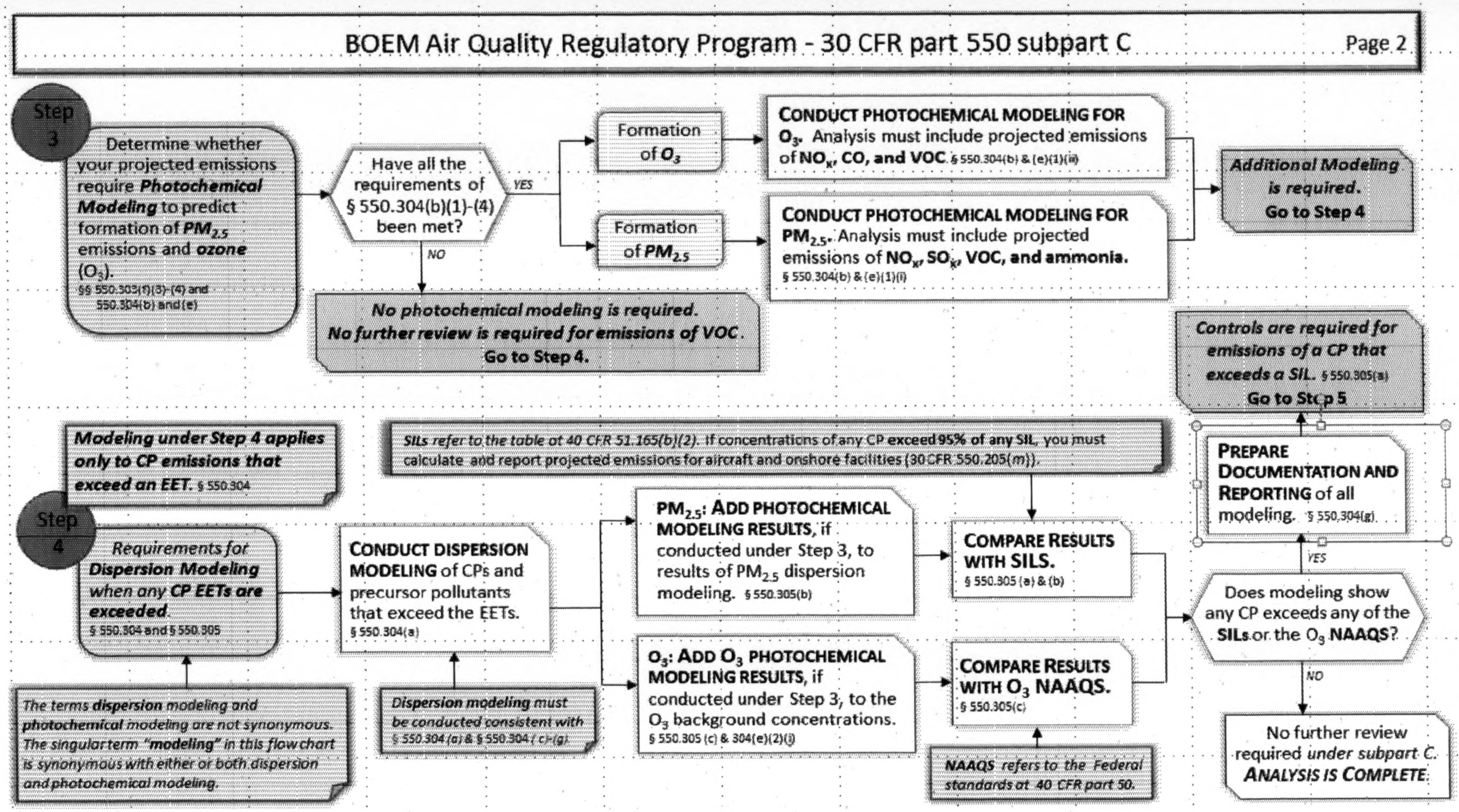
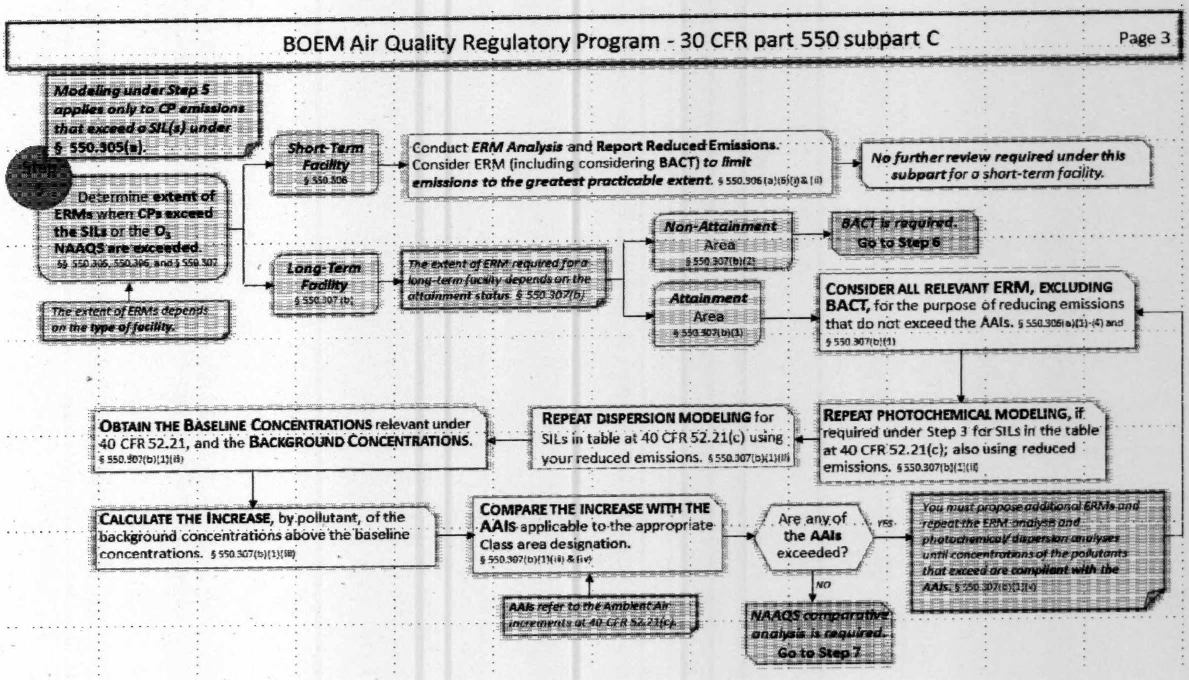
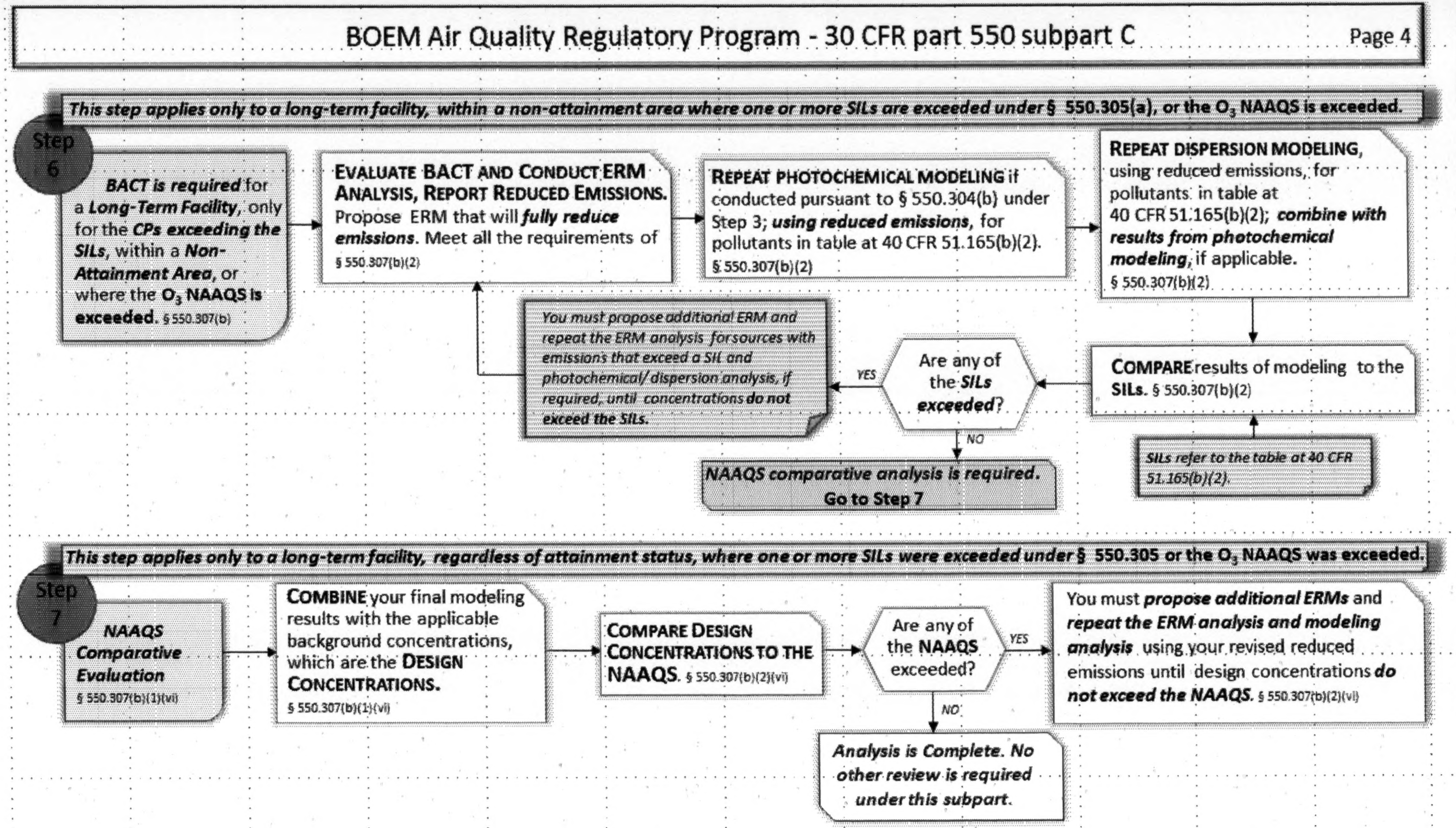
[25] Existing BOEM air pollution prevention and control regulations (30 CFR part 550 subpart C) apply air quality standards and screening methods current as of 1980. At that time $PM_{2.5}$ was not regulated and all PM was considered as total suspended particulates (TSP). Neither Pb nor O_3 were included in the USEPA's screening methods under 40 CFR 52.21(c) or 40 CFR 165(b)(2).


BOEM Air Quality Regulatory Program (AQRP) - 30 CFR part 550 subpart C
Step 1
Determine *Exemption Status* of your plan's projected or complex total emissions. § 550.303
EETs are Emission Exemption Thresholds
Calculate **PROJECTED EMISSIONS** and **EETs** for your plan. § 550.303(b) & (c) & (d)
Projected Emissions also refers to Complex Total Emissions, if applicable, and includes Attributed Emissions, for purposes of this flow chart.
CPs are Criteria Air Pollutants; VOC are volatile organic compounds.
Do any Projected Emissions of CPs or VOC **EXCEED ANY OF THE EETs?** § 550.303(e) & (f)
YES
NO
If VOC emissions exceed the EET, **CONTROLS ARE REQUIRED.** § 550.303 (f)(1)
If emissions of any CP exceeds the EETs, **COMPUTER MODELING IS REQUIRED.** § 550.303 (f)(2) –(4)
Go to Step 2 *See below.*
Go to Step 3. *Next page.*
EMISSION SOURCES ARE EXEMPT FROM MANDATORY CONTROLS, presumed to be *de minimis*, and NO FURTHER ACTION IS REQUIRED UNDER THIS SUBPART. ***AQRP ANALYSIS IS COMPLETE.*** § 550.303 (e)
This step applies only to a facility where emissions of VOC exceeds the EET; and applies regardless of any emissions of CPs that exceed the EETs (see Step 3).
Step 2
Determine the extent of ***ERMs*** for ***non-exempt VOC emissions.*** §§ 550.303(f)(1), 550.306 & 550.307
ERMs are Emission Reduction Measures
Short-Term Facility: § 550.306(a)
Long-Term Facility: § 550.307(a) *The extent of ERM required for a long-term facility depends on the attainment status of* O_3 *and* $PM_{2.5}$.
Conduct ***ERM Analysis*** and **Report Reduced Emissions.** Consider ERM (including considering BACT) ***to limit emissions to the greatest practicable extent.*** § 550.306 (a)(6)(i) & (ii)
Attainment for O_3 ***and*** $PM_{2.5}$ § 550.307(a)(1)
Nonattainment for O_3 ***or*** $PM_{2.5}$ § 550.307(a)(2)
Must Evaluate BACT and other relevant ERM. Conduct ***ERM Analysis*** and **Report Reduced Emissions.** Propose VOC emission reductions that will ***fully reduce VOC emissions so that EET is not exceeded.*** § 550.307(a)(2)
Go to Step 3


BOEM Air Quality Regulatory Program - 30 CFR part 550 subpart C
Page 2
Step 3
Determine whether your projected emissions require **Photochemical Modeling** to predict formation of **$PM_{2.5}$** emissions and **ozone** (O_3). §§ 550.303(f)(3)-(4) and 550.304(b) and (e)
Have all the requirements of § 550.304(b)(1)-(4) been met?
YES
NO
No photochemical modeling is required. No further review is required for emissions of VOC. Go to Step 4.
Formation of O_3
Formation of $PM_{2.5}$
CONDUCT PHOTOCHEMICAL MODELING FOR O_3. Analysis must include projected emissions of NO_x, CO, and VOC § 550.304(b) & (e)(1)(ii)
CONDUCT PHOTOCHEMICAL MODELING FOR $PM_{2.5}$. Analysis must include projected emissions of NO_x, SO_x, VOC, and ammonia. § 550.304(b) & (e)(1)(i)
Additional Modeling is required. Go to Step 4
Controls are required for emissions of a CP that exceeds a SIL. § 550.305(a) Go to Step 5
Modeling under Step 4 applies only to CP emissions that exceed an EET. § 550.304
SILs refer to the table at 40 CFR 51.165(b)(2). If concentrations of any CP exceed 95% of any SIL, you must calculate and report projected emissions for aircraft and onshore facilities (30 CFR 550.205(m)).
Step 4
Requirements for Dispersion Modeling when any CP EETs are exceeded. § 550.304 and § 550.305
CONDUCT DISPERSION MODELING of CPs and precursor pollutants that exceed the EETs. § 550.304(a)
$PM_{2.5}$: ADD PHOTOCHEMICAL MODELING RESULTS, if conducted under Step 3, to results of $PM_{2.5}$ dispersion modeling. § 550.305(b)
O_3: ADD O_3 PHOTOCHEMICAL MODELING RESULTS, if conducted under Step 3, to the O_3 background concentrations. § 550.305 (c) & 304(e)(2)(i)
COMPARE RESULTS WITH SILS. § 550.305 (a) & (b)
COMPARE RESULTS WITH O_3 NAAQS. § 550.305(c)
NAAQS refers to the Federal standards at 40 CFR part 50.
PREPARE DOCUMENTATION AND REPORTING of all modeling. § 550.304(g)
Does modeling show any CP exceeds any of the SILs or the O_3 NAAQS?
YES
NO
No further review required under subpart C. ANALYSIS IS COMPLETE.
The terms dispersion modeling and photochemical modeling are not synonymous. The singular term "modeling" in this flow chart is synonymous with either or both dispersion and photochemical modeling.
Dispersion modeling must be conducted consistent with § 550.304 (a) & § 550.304 (c)-(g).


BOEM Air Quality Regulatory Program - 30 CFR part 550 subpart C
Page 3
Modeling under Step 5 applies only to CP emissions that exceed a SIL(s) under § 550.305(a).
Step 5
Determine extent of ERMs when CPs exceed the SILs or the O_3 NAAQS are exceeded. §§ 550.305, 550.306, and § 550.307
The extent of ERMs depends on the type of facility.
Short-Term Facility § 550.306
Long-Term Facility § 550.307(b)
Conduct ERM Analysis and Report Reduced Emissions. Consider ERM (including considering BACT) to limit emissions to the greatest practicable extent. § 550.306(a)(6)(i) & (ii)
No further review required under this subpart for a short-term facility.
The extent of ERM required for a long-term facility depends on the attainment status. § 550.307(b)
Non-Attainment Area § 550.307(b)(2)
BACT is required. Go to Step 6
Attainment Area § 550.307(b)(1)
CONSIDER ALL RELEVANT ERM, EXCLUDING BACT, for the purpose of reducing emissions that do not exceed the AAIs. § 550.306(a)(1)-(4) and § 550.307(b)(1)
REPEAT PHOTOCHEMICAL MODELING, if required under Step 3 for SILs in the table at 40 CFR 52.21(c); also using reduced emissions. § 550.307(b)(1)(i)
REPEAT DISPERSION MODELING for SILs in table at 40 CFR 52.21(c) using your reduced emissions. § 550.307(b)(1)(i)
OBTAIN THE BASELINE CONCENTRATIONS relevant under 40 CFR 52.21, and the BACKGROUND CONCENTRATIONS. § 550.307(b)(1)(ii)
CALCULATE THE INCREASE, by pollutant, of the background concentrations above the baseline concentrations. § 550.307(b)(1)(iii)
COMPARE THE INCREASE WITH THE AAIs applicable to the appropriate Class area designation. § 550.307(b)(1)(iii) & (iv)
AAIs refer to the Ambient Air Increments at 40 CFR 52.21(c).
Are any of the AAIs exceeded?
YES
NO
You must propose additional ERMs and repeat the ERM analysis and photochemical/dispersion analyses until concentrations of the pollutants that exceed are compliant with the AAIs. § 550.307(b)(1)(v)
NAAQS comparative analysis is required. Go to Step 7



BOEM Air Quality Regulatory Program - 30 CFR part 550 subpart C
Page 4
Step 6
YES
NO
Step 7
YES
NO

This step applies only to a long-term facility, within a non-attainment area where one or more SILs are exceeded under § 550.305(a), or the O_3 NAAQS is exceeded.

BACT is required for a ***Long-Term Facility***, only for the ***CPs exceeding the SILs***, within a ***Non-Attainment Area***, or where the **O_3 NAAQS is exceeded.** § 550.307(b)

EVALUATE BACT AND CONDUCT ERM ANALYSIS, REPORT REDUCED EMISSIONS. Propose ERM that will ***fully reduce emissions***. Meet all the requirements of § 550.307(b)(2)

REPEAT PHOTOCHEMICAL MODELING if conducted pursuant to § 550.304(b) under Step 3; ***using reduced emissions,*** for pollutants in table at 40 CFR 51.165(b)(2). § 550.307(b)(2)

REPEAT DISPERSION MODELING, using reduced emissions, for pollutants in table at 40 CFR 51.165(b)(2); ***combine with results from photochemical modeling,*** if applicable. § 550.307(b)(2)

COMPARE results of modeling to the **SILs.** § 550.307(b)(2)

SILs refer to the table at 40 CFR 51.165(b)(2).

Are any of the ***SILs exceeded***?

*You must propose additional ERM and repeat the ERM analysis for sources with emissions that exceed a SIL and photochemical/dispersion analysis, if required, until concentrations **do not exceed the SILs.***

***NAAQS comparative analysis is required.* Go to Step 7**

This step applies only to a long-term facility, regardless of attainment status, where one or more SILs were exceeded under § 550.305 or the O_3 NAAQS was exceeded.

NAAQS Comparative Evaluation § 550.307(b)(1)(vi)

COMBINE your final modeling results with the applicable background concentrations, which are the **DESIGN CONCENTRATIONS.** § 550.307(b)(1)(vi)

COMPARE DESIGN CONCENTRATIONS TO THE NAAQS. § 550.307(b)(2)(vi)

Are any of the **NAAQS** exceeded?

You must ***propose additional ERMs*** and ***repeat the ERM analysis and modeling analysis*** using your revised reduced emissions until design concentrations ***do not exceed the NAAQS.*** § 550.307(b)(2)(vi)

Analysis is Complete. No other review is required under this subpart.

While many significant changes would be made to BOEM's AQRP under the proposed rule, the analytical framework remains fundamentally the same. Under both the current regulations and the proposed rule, the lessee or operator must perform the following fundamental steps: (1) Identify and describe the characteristics of all the relevant emissions sources; (2) calculate the emissions associated with these sources; (3) determine which emissions should properly be allocated to the lessee's or operator's plan; (4) compare the emissions totals, on a per-pollutant basis, to a series of exemption formulas; (5) apply ERMs to sources of VOC emissions that exceed the VOC exemption threshold; (6) conduct modeling of the potential impacts for any criteria pollutant that exceeds an exemption threshold and compare against various AAQSB; and (7) propose emission reduction measure(s) as necessary to ensure compliance with those standards and benchmarks. The "Summary of Key Changes" section of this preamble outlines the major changes included in this proposed rule. While the basic steps of the AQRP process would remain similar, the proposed rule would alter how the data are gathered, the standards and benchmarks against which the data are evaluated, and the process by which the air quality information is reviewed.

BOEM's current air quality evaluation methodology is based in large part on the USEPA's New Source Review (NSR) pre-construction permitting program.[26] Under one part of that program, USEPA uses pollutant-specific emission rates (called Significant Emissions Rates) to determine whether a permit applicant is required to conduct an ambient air quality analysis for each pollutant.[27] If so, USEPA then uses concentration levels known as SILs to help determine whether an individual source will cause or contribute to an exceedance of the NAAQS and the level of analysis necessary to make that determination.

BOEM uses emission exemption thresholds to determine whether the lessee's plan emissions would potentially impact the air quality of the State. When the thresholds are not exceeded, those emissions are presumed to not cause or contribute to an exceedance of the NAAQS. The USEPA uses applicability thresholds to determine if a source is subject to the requirements of the respective parts of the NSR permitting program and then applies screening criteria like the SILs[28] to determine whether emissions per pollutant require further regulatory review.

Given BOEM's distinct mandate to focus on State impacts from OCS activities, BOEM currently uses a formula that accounts for the distance of the facility from the shoreline. Specifically, the determination as to whether a facility could significantly affect onshore air quality under BOEM's AQRP is based on a formula that considers both the amount of air pollutant emitted and the distance of the proposed facility from the shoreline.[29] Because BOEM's determination of what constitutes potentially significant emissions varies depending on a proposed facility's distance from shore, BOEM uses distance as a variable in its formula to determine the relevant EET. If a proposed plan would cause emissions of criteria or precursor air pollutants in excess of the EET, the proposed plan is required to include a detailed air quality analysis. If a proposed plan would not cause emissions of criteria or precursor air pollutants in excess of the EET, the plan is not required to include a detailed air quality analysis. BOEM refers to plans that are not required to include a detailed air quality analysis as "exempt."

2. Exemption Threshold Analysis

The first step in the approach of both the current regulations and the proposed rule is the exemption threshold analysis discussed above. BOEM determines, based on the information provided by the lessee or operator, whether or not any given plan (EP, DPP or DOCD) will generate emissions above a defined exemption threshold. If so, further analysis is required. If not, the impact to the air quality of the State is presumed to be *de minimis* and no further action is required.

BOEM currently has only one set of exemption thresholds, which are, under the existing regulations, applied identically in the Central and Western GOM OCS Regions and offshore of the North Slope Borough of the State of Alaska. BOEM is now in the process of conducting scientific studies to re-evaluate the exemption thresholds formulas, for both the GOM and Alaska OCS Regions to tailor those thresholds to the relevant environmental characteristics of each region and to take into consideration USEPA standards applied to various time periods, whether annual or shorter intervals. These BOEM studies will evaluate and, if necessary, provide the basis for updating the current exemption threshold equations and consider whether recent advances in the field of computer simulation modeling and the availability of comprehensive meteorological datasets unique to each region may be applied to improve the exemption threshold equations by applying the updated underlying data. The studies will use computer-simulated air quality dispersion and photochemical modeling to provide the information necessary to evaluate the current threshold equations (*i.e.,* for the EETs) and, if necessary, establish a basis for developing a new method. All modeling conducted for the studies will be consistent with the USEPA's Guideline on Air Quality Models (40 CFR part 51 appendix W).

The GOM and Alaska OCS studies are designed to fulfill the following objectives:

- Prepare onshore and offshore emissions inventories for use in computer simulation air quality dispersion and photochemical modeling, based on the multi-sale 2017–2022 scenario emissions for both OCS Regions;
- Evaluate current meteorological data and develop new data, as necessary, for input into air quality models;
- Conduct air quality dispersion and photochemical modeling to discern the collective effect of onshore and offshore emissions on the onshore area of adjacent States;
- Investigate the current exemption threshold formulas for evidence the rates are protective of the annual and short-term (24-hours or less) AAQSB using dispersion and photochemical air quality modeling and, if necessary, develop a new method;

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[26] The NSR pre-construction permitting program is mainly composed of two parts: The Prevention of Significant Deterioration (PSD) program in attainment areas and the New Source Review Program for non-attainment areas. The PSD program applies to any "major emitting facility," including any OCS source, that commences construction or undertakes a major "modification" in an attainment area (CAA sections 165(a) and 169(2)(C)). A "major emitting facility" or "major source" is a stationary source that emits or has the potential to emit (PTE) any air pollutant in the amount of at least 100 or 250 tpy, depending on the source category and irrespective of the facility's location. A major "modification" is any physical or operational change to a stationary source that would result in both a significant emissions increase and a significant net emissions increase of one or more regulated NSR pollutants. A new major source or major modification must apply BACT, which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts (40 CFR 52.21(b)(12) and (j)).

[27] 40 CFR 52.21(b)(23); 40 CFR 52.21(m)(1)(i).

[28] The SILs are benchmarks used by the USEPA to determine whether some area may potentially be significantly affected by the emissions generated from a proposed new stationary source of emissions. The SILs are used as a screening tool to determine what additional steps, if any, may be required before a stationary source can be approved.

[29] This differs from the way in which the USEPA determines which facilities are subject to the NSR preconstruction permitting program. As explained in the previous footnote, the USEPA makes this determination based on whether the emissions of a new source or modification to an existing source are higher than a certain amount of tons of air pollution per year or whether the modification would result in both a significant emissions increase and a significant net emissions increase of one or more regulated NSR pollutants irrespective of the facility's or facilities' location.

- Conduct visibility analyses for the GOM Region Class I areas: Breton Wilderness; Saint Marks Wilderness; Chassahowitzka Wilderness; and Bradwell Bay; and,
- Perform a 40 CFR part 51 appendix W section 3.2.2 "Equivalency Demonstration" for modeling purposes in the GOM region. Such an "Equivalency Demonstration" would involve determining the most appropriate model for the exemption thresholds, taking into account the USEPA list of preferred models and the relevant criteria for evaluating alternatives.

As discussed above, BOEM is considering establishing two or more sets of EETs (*i.e.*, per pollutant, averaging time, and location), at least one for the GOM OCS Region and at least one for the area offshore of the North Slope Borough of the State of Alaska. For this reason, BOEM would like comments on the appropriateness of potentially distinct emissions thresholds or threshold formulas for these two areas, and/or how these thresholds should be structured.

The USEPA recently established new one-hour NAAQS for NO$_2$, and SO$_2$, as well as changes to the 8-hour O$_3$ and annual PM$_{2.5}$ NAAQS, and also given that the USEPA has recommended an interim SIL for one-hour NO$_2$ at 8μg/m^3 [30] and an interim SIL for one-hour SO$_2$ at 3 parts per billion,[31] but has not proposed to add these SILs (or any SILs for PM$_{2.5}$ or ozone) to 40 CFR 51.165(b)(2), comments are solicited on how these new ambient standards and SILs that have the status of only being USEPA recommendations should be implemented in the context of the new studies, for the purpose of updating the new EETs that result.

Until such time as new EETs are established, the existing exemption thresholds will continue to apply identically in both regions.

3. Modeling Analysis

In the event the exemption threshold analysis indicates that one or more criteria or major precursor pollutants would exceed an applicable threshold, the plan submitter must proceed to the second step in the BOEM AQRP, which is the modeling analysis. The purpose of the modeling analysis is to help BOEM determine, based on the information provided by the lessee or operator, whether or not the proposed operations that generate emissions above an exemption threshold would cause or contribute to a violation of the NAAQS.[32] BOEM's AQRP currently models the onshore concentrations created by the relevant criteria or precursor pollutants emitted offshore. Under existing regulations, plans that would result in operations or uses that generate ambient concentrations above these Significance Levels as modeled onshore are subject to further review and analysis. BOEM's Significance Levels are listed in its regulations at 30 CFR 550.303(e).

These Significance Levels in BOEM's existing regulations are based on USEPA's SILs (as they existed approximately 35 years ago), which are ambient concentration levels used by the USEPA to determine whether the ambient air concentration of any given air pollutant could cause or contribute to a violation of the NAAQS at a given location. Under USEPA's historical practice in the PSD program, if the ambient air impacts of each criteria air pollutant are below the applicable SILs for all relevant averaging times, then the incremental emissions are considered to have an impact that is *de minimis* and, therefore, not significant. BOEM's regulations utilize the USEPA's SILs to determine whether emissions of any given pollutant that originates offshore could have a potentially significant effect onshore. The USEPA SILs are expressed in terms of pollutant concentrations averaged over a specific period of time (*i.e.*, averaging time), for example on an annual basis. There are also SILs designed to evaluate peak emissions of air pollutants over shorter time intervals, which include the 1-hour, 3-hour, 8-hour, and 24-hour averaging times. By incorporating the relevant USEPA values listed in a table in an USEPA regulation, BOEM would automatically apply these timing intervals or averaging times, as well for those pollutants and averaging times that are reflected in USEPA regulations.

Under BOEM's existing regulations, in order to evaluate the potential onshore effects of offshore emissions, the models project the ambient concentration of any given air pollutant at various measurement points onshore, which are referred to as receptor locations. If any projected concentration of a given air pollutant does not exceed BOEM's applicable Significance Level(s) at all receptor locations onshore for all relevant averaging times, then the incremental emissions are presumed *de minimis*, and no further analysis is required of emissions of that pollutant under the BOEM AQRP. In other cases, additional modeling and/or the application of relevant emissions reductions measures will generally be required.

At the time the current BOEM regulations were promulgated, there were no USEPA-approved modeling approaches to quantify the impacts of single sources of volatile organic compound (VOC) emissions on ambient O$_3$ levels. For this reason, the current rule does not require modeling of VOCs and there is nothing analogous to a SIL to indicate ambient impact of VOCs. Instead of evaluating VOC emissions against a SIL, VOCs are evaluated only against an exemption threshold. CPs and the reductions in their emissions that may be required under the current regulations are determined based on several different levels that can vary with the location of the facility, the attainment status of the areas it affects, and whether the facility is long- or short-term. In contrast, in those situations where the emissions of VOCs exceed the relevant emission exemption threshold, BOEM's regulations instead require a reduction in the emissions of VOCs [33] Based on the analysis done at the time, BOEM concluded that this reduction should have been sufficient to address the potential impact of VOCs on the formation of O$_3$.[34]

4. Controls for Short-Term Facilities

If it is determined through modeling that the planned operations will generate an onshore concentration of one or more air pollutants in excess of the SILs, various further analyses must be done in order to determine what controls must be applied. Under the current AQRP, if a facility is projected to cause ambient concentrations of air pollution above acceptable levels (*i.e.*, the SILs), the lessee or operator of that facility must propose the application of BACT [35] in connection with post-control modeling, to demonstrate the AAQSB will likely be met. The requirements applicable to making this determination vary depending on the amount of time that the facility described in the proposed plan is anticipated to be present at any given location. The current regulations make a distinction between temporary and permanent facilities. Under the proposed rule, the phrase "short-term facility" is used instead of the phrase "temporary facility." In both cases, these terms refer to a facility that is located in one place for less than three years.

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[30] Available at: *http://www3.epa.gov/nsr/documents/20100629no2guidance.pdf.*

[31] Available at *http://www.epa.gov/sites/production/files/2015-07/documents/appwso2.pdf.*

[32] Under this proposed rule, the modeling analysis would also be used in certain cases to determine whether an exceedance of the AAIs has occurred; this is not listed separately, since the purpose of the AAI analysis is to protect an attainment area from potentially exceeding the NAAQS.

[33] When VOC emissions exceed the EET for a short-term facility or a long-term facility affecting only an attainment area, the lessee or operator must apply ERM to reduce VOC emissions to the greatest extent possible. For a long-term facility affecting a non-attainment area, the lessee or operator must apply ERM to reduce VOC emissions so that the EET is not exceeded.

[34] Results of the ongoing studies in the GOM and Alaska will provide an updated method for evaluating VOC contributions to ambient ozone concentrations in the future.

[35] In this proposed rule, references to BACT are intended to refer to BOEM's current or proposed requirements, unless the USEPA's definition is specifically referenced. Under the USEPA regulations, most types of ERM could qualify as BACT, whereas BOEM's definition is substantially limited to physical or mechanical controls.

Under the proposed rule, if the projected concentration increase due to emissions from the proposed short-term facility exceeds the SILs but such exceedance only affects attainment areas, the lessee or operator would be required to determine the maximum amount of emissions reductions that it can achieve with operational controls and/or equipment replacements that are technically and economically feasible. This would represent a level of emissions reductions that achieves the maximum efficiency of their operations with respect to emissions reduction. At that point, the lessee or operator could decide whether to apply those operational controls and/or equipment replacements, or to instead obtain emissions credits. If it is determined that there are no operational controls and/or equipment replacements that are technically and economically feasible, and the emissions from the proposed facility would affect only attainment areas, then no ERM would be required. In BOEM's proposed rule, a maintenance area is treated as an attainment area; thus, the same requirements would apply.

If the projected emissions for the proposed short-term facility exceed the SILs and such exceedance would affect a designated non-attainment area, the lessee or operator would not only be required to conduct an ERM analysis, but might also be required by the Regional Supervisor to apply additional types of ERM (beyond that which was proposed in the original plan).

Under the proposed rule, described in more detail in the section-by-section analysis for section 550.306, a process has been outlined to facilitate the determination of the most appropriate ERM, of which BACT is one option. If the lessee or operator proposes to use BACT, the lessee or operator would be required to provide a description of the associated energy, environmental and economic impacts,[36] and other costs.

In the case of a short-term facility, the application of ERM would generally be sufficient for BOEM to conclude, without further analysis, that the facility does not cause a significant effect on the air quality of a State. As explained in the next Section, this presumption would not apply in the case of a long-term facility. Although BOEM would set the air emissions limits in connection with its approval of the plan, BSEE would be responsible for ensuring that any required ERM, including BACT, are actually applied in compliance with the plan requirements.

5. Controls for Long-Term Facilities

If emissions from a long-term facility generate onshore concentrations of air pollutants in excess of the SILs, under the current regulations, the lessee or operator must apply BACT. If only an attainment area is affected, the proposed BACT must result in the plan or facility meeting the Maximum Allowable Concentration Increases (MACIs), which are set out in a table in BOEM's regulations. The MACIs are based on the USEPA's AAIs, and are designed to prevent the air quality in clean areas from deteriorating to an unacceptable level as set by the NAAQS. The NAAQS represent a maximum allowable concentration "ceiling" for each air pollutant and averaging time that does not vary geographically. A MACI, on the other hand, represents the maximum increase in concentration that is allowed to occur above a baseline concentration for any given pollutant. Baseline concentrations vary geographically. When the MACI[37] is added to the baseline concentration, the result is a new "ceiling" specific to that area. A significant deterioration in the air quality is said to occur when the concentration of a pollutant would exceed the applicable MACI added to the baseline concentration in that area. BOEM and its predecessors have taken the position that the exceedance of a MACI constitutes a significant deterioration in air quality that "significantly affect[s] the air quality of any State." Moreover, the MACIs are designed to ensure that attainment areas do not fall out of attainment, and so they are appropriate increments to "ensure compliance with the [NAAQS]." Thus an activity that has the potential to cause an exceedance of the MACIs should not be approved under BOEM's current regulations.

These MACIs, and the AAIs on which they were based, vary depending on whether any given location is defined as a Class I, a Class II or Class III location (described below in the discussion of the definitions of those terms) and the relevant timeframes of exposure (*i.e.*, averaging times).

Under the proposed rule, with respect to impacts in an attainment area, if emissions from a long-term facility were to generate concentrations of air pollutants landward of the SSB in excess of the SILs, the lessee or operator would be required to undertake an ERM analysis, excluding BACT, to determine the most effective and technically and economically feasible approach for reducing the projected emissions from its facility. If the projected concentration increase due to emissions from the proposed facility exceed the SILs but do not exceed the AAIs, the proposed plan could be approved without the lessee or operator having to bring the concentration increase due to the emissions from its operations below the SILs. If the projected emissions exceed the AAIs after the application of ERM, the lessee or operator would be required to use additional ERM until it could demonstrate its emissions no longer resulted in such an exceedance.

Under the proposed rule, with respect to impacts in a non-attainment area, if emissions from a long-term facility were to generate concentrations of air pollutants landward of the SSB in excess of the SILs, the lessee or operator would be required to undertake an ERM analysis, including BACT, to determine the most environmentally effective of the technically and economically feasible approaches for reducing the projected emissions from its facility. If the projected concentration increase—due to emissions from the proposed facility—continue to exceed the SILs after the application of ERM, the proposed plan could not be approved without the lessee or operator having to bring the concentration increase due to emissions from its operations below the SILs. Regardless of whether the projected emissions would affect a designated non-attainment or attainment area, the lessee or operator would be free to propose emissions credits in lieu of any other ERM to accomplish this objective.

The proposed rule retains a requirement in the current regulations (in 30 CFR 550.303(g)(2)(i)(B)) that no plan can be approved if that plan would result in the generation of emissions sufficient to cause an area of a State to switch from attainment to a non-attainment status. For that reason, any long-term facility that demonstrates projected emissions in excess of the SILs would be required to demonstrate that those emissions do not cause the exceedance of any NAAQS in an attainment area.

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[36] The description of the associated energy, environmental and economic impacts is not required in the case of non-BACT ERM.

[37] Under BOEM's current regulations, the term MACI is used. This proposed rule would eliminate that term and use the term AAI exclusively.

6. Protection of Exceptional Natural Resources

As part of the 1977 amendments to the CAA (Pub. L. 95–95; 91 Stat. 685), Congress mandated that the country be divided into various areas based on their sensitivity to potential problems associated with poor air quality. These amendments establish Class I, II, and III areas. The restriction on emissions are most strict in Class I areas and are progressively more lenient in Class II and III areas. In addition to the three classifications mentioned in the statute, the Federal Land Managers (FLMs)[38] have established a fourth classification which they title "sensitive Class II areas." Sensitive Class II areas represent an intermediate classification intended to designate special areas, such as national monuments and national refuges that, while not subject to the same level of controls as Class I areas, require special protections above those normally afforded to typical Class II areas.

Thus, parts of the country are designated as Class I or sensitive Class II areas to indicate that they have been identified for special protections. National parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value are generally designated as Class I[39] or as sensitive Class II areas. FLMs, including the U.S. Department of Agriculture's Forest Service, and DOI's Bureau of Land Management (BLM), National Park Service (NPS) and U.S. Fish and Wildlife Service (FWS) manage these areas. Together, these FLMs have the affirmative responsibility to protect the unique attributes and air quality of Class I and sensitive Class II areas. BOEM has not proposed and does not intend to evaluate air quality impacts in non-sensitive Class II or Class III areas other than by applying the typical AQRP requirements.

Under the CAA, FLMs are charged with reviewing available information about proposed facilities in order to determine their potential air quality impacts on Class I areas. FLMs have established Air Quality Related Values (AQRV), which represent resources which are sensitive to air quality and include a wide array of vegetation, soils, water, fish and wildlife, and visibility. The goal of the FLMs is to ensure that pollution levels stay below the critical loads (*i.e.,* below which they have determined there would be no adverse impact to a Class I area). These AQRVs include values designed to protect visibility, odor, flora, fauna, and geological, archeological, historical, and cultural resources, as well as soil and water resources. The AQRVs for various Class I areas differ depending on the purpose and characteristics of a particular area and the assessment by an area's FLM. The FLMs determine the requirements for compliance with each AQRV.[40]

FLMs evaluate plans submitted to BOEM to determine whether there would be any potential adverse impact to a Class I or sensitive Class II area and to recommend controls, as appropriate, if there are potentially adverse impacts. In order to complement this process, BOEM's AQRP requires any proposed long-term facility whose emissions cause an exceedance of the SILs to meet the standards for the MACIs that correspond to the Class designation of the areas onshore of the proposed operations.

7. Primary and Secondary National Ambient Air Quality Standards (NAAQS) Evaluation

Once BOEM determines the MACIs or the SILs would not be exceeded, BOEM must make a further determination that the NAAQS would also not be exceeded in any attainment area.

There are two types of NAAQS, primary and secondary. Primary NAAQS are intended to protect public health, including the health of sensitive subpopulations with a requisite margin of safety, whereas secondary standards are intended to protect public welfare (*e.g.,* effects on crop yields) from any known or anticipated adverse effects associated with the presence of the specified pollutants in ambient air. These standards are composed of four elements: Indicator; averaging time; statistical form; and level. Under both BOEM's current regulations and its proposed rule, for any pollutant for which there is more than one standard, plans must comply with whichever NAAQS standard is strictest in terms of the ERMs needed for the facility. Generally, according to both BOEM and USEPA regulations, no project can be approved if it would result in design concentrations for any given air pollutant in excess of the level for either the primary or secondary NAAQS for that pollutant in an attainment area.

The NAAQS, codified at 40 CFR part 50, identify the maximum allowable concentrations, or "ceilings," and forms, for each of the various CPs at any given location. Under its current regulations, BOEM will not approve a plan that it determines would cause the ambient air quality either at the shoreline or farther onshore to deteriorate significantly beyond the air quality specified by the applicable NAAQS for any given air pollutant, regardless of whether the change would comply with the other relevant SIL(s) or AAI(s) for that same pollutant.[41] Because the NAAQS represent the amount of an air pollutant that is allowable at any given location, evaluating the emissions of the pollutant to determine the potential for an exceedance requires information on existing concentrations of the pollutant at the location, *i.e.,* the background concentration. The sum of the background concentration of the pollutant plus the incremental concentration of that same pollutant caused by the projected emissions for the relevant averaging time and statistical form is referred to as the design concentration of that pollutant. BOEM compares the design concentration with the NAAQS to determine if there is likely to be an exceedance.

8. Intersection With the National Environmental Policy Act

Under current BOEM regulations, while the AQRP is focused on the extent to which projected air emissions generated offshore could significantly impact the air quality onshore, BOEM also considers air quality impacts related to lease and plan approval as part of its analyses conducted pursuant to NEPA. BOEM considers potential impacts from air emissions individually and collectively, including potential air quality impacts offshore and onshore that would be caused by proposed oil and gas exploration and development activities. Because of BOEM's staged decision-making with respect to activities conducted under an OCS lease, NEPA reviews involve multiple analyses and occur at several time points in the OCS lease and development process.

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[38] The Federal Land Managers' Air Quality Related Values Work Group (FLAG) was formed to develop a more consistent approach for the Federal Land Managers (FLMs) to evaluate air pollution effects on their resources. Of particular importance is the New Source Review (NSR) program, especially in the review of Prevention of Significant Deterioration (PSD) of air quality permit applications. For a facility located in or near a Class I area, the PSD permitting program uses AQRVs when evaluating the potential impact of a proposed source or modification on resources which are sensitive to air quality.

[39] Several tribes have also requested USEPA to redesignate their lands from Class II to Class I to provide additional air quality protection. These are the Northern Cheyenne Reservation, the Flathead Indian Reservation, the Fort Peck Indian Reservation, the Spokane Indian Reservation and the Forest County Potawatomi Community Reservation. See 40 CFR 52.1382(c), 52.2497(c) and 52.2581(f).

[40] See *http://www.nature.nps.gov/air/Pubs/pdf/flag/FLAG_2010.pdf.*

[41] There could be an exception in a case where offsets are used in lieu of another ERM. In the proposed rule, the emissions credits must affect the same Air Quality Control Region (AQCR) as the facility's projected emissions. Because the boundaries of the AQCR may not be the same as the boundaries of the non-attainment areas (because non-attainment areas are typically much smaller), and because the proposed rule would commit BOEM to always allowing offsets provided they are in the same AQCR, the effects of the facility's pollution and the offsets may occur in different areas. Thus, it is possible that the non-attainment area may remain unaffected even after the relevant ERM have been applied. Since the offset is the same magnitude as the required reduction, the statement would be accurate on an aggregate basis, regardless of the attainment/non-attainment areas to which the offset would apply.

In order to comply with the applicable requirements of NEPA, BOEM evaluates the likely cumulative impacts of OCS development during its Five-Year Oil and Gas Leasing Program and the associated Five-Year Programmatic Environmental Impact Statement. BOEM conducts an additional analysis of such prospective impacts at the time it prepares a multi-sale Environmental Impact Statement (EIS) or a NEPA analysis on an individual lease sale. BOEM conducts an even more detailed air quality analysis at the time the lessee or operator submits the EP, or RUE or ROW application, lease-term pipeline application, and again when the lessee or operator submits a DPP or DOCD. At these two later stages, BOEM conducts the AQRP in order to ensure the lessee's or operator's implementation proposals comply with the applicable requirements of OCSLA and the corresponding BOEM regulations.

9. Additional Environmental Review

BOEM conducts analyses of the potential impact of OCS development on the conservation of the natural resources of the OCS and overlying waters (including the fish, marine mammals, plants, corals, etc.) to ensure the prevention of waste; to evaluate those circumstances that could result in environmental and other hazards; and to conserve and protect the associated mineral, economic, and environmental resources in and over the OCS, in accordance with OCSLA at 43 U.S.C. 1334(a), 1340(c), and 1351. Current BOEM regulations also specify each Regional Supervisor should evaluate every plan and make a determination that the proposed activities will not cause serious harm or damage to the marine, coastal, or human environment (*e.g.,* 30 CFR 550.202).

E. Conclusion

BOEM's AQRP is intended to protect the air quality of the States and to achieve the following objectives with regard to OCS exploration and development: (1) To protect public health from adverse effects; (2) to protect public welfare, including the economies of the States, by preventing a deterioration in the air quality of the environment (*e.g.,* to protect crops, forests, and wildlife); (3) to prevent the formation of new designated non-attainment areas; and (4) to preserve and enhance the air quality in national parks and other areas of special natural, recreational, scenic, or historic value. BOEM continues to maintain these same goals and objectives as it proposes to amend the regulations to more effectively meet these goals and objectives. In most cases, these objectives are similar to those of corresponding analysis and permit review processes of the States, working in conjunction with the USEPA.

In addition to BOEM's AQRP, the Bureau of Safety and Environmental Enforcement (BSEE) has an enforcement program designed to ensure lessees and operators comply with BOEM's air quality regulations and that such lessees and operators do not emit air pollutants that exceed the terms of their approved plans or RUE or pipeline ROW applications. BOEM provides plan information to BSEE on a regular basis, and BSEE uses this information to evaluate applications for permits to drill. BSEE also monitors lessee or operator operations on an ongoing basis, as one component of its inspections process.

IV. Summary of Key Changes

A. Air Pollution Emissions Standards

The current rule has AAQSB relevant to CO, SO_2, NO_X, total suspended particulates (TSPs) and VOCs. The proposed rule would broaden the scope of BOEM's AQRP to cover all the NAAQS criteria pollutants and the major precursor pollutants, as required by OCSLA. Under the proposed rule, carbon monoxide and VOCs would be subject to substantially the same requirements as under the current regulations. The review of SO_2 would be expanded to also include an evaluation of other sulphur oxides (SO_X). Total suspended particulates would be replaced as an indicator pollutant with a new indicator pollutant titled PM_{10}. New regulatory requirements would be added for O_3, Pb, $PM_{2.5}$, and NH_3, none of which have specific emissions limits in the current regulations. In addition, the requirements for hydrogen sulfide (H_2S), a minor precursor to SO_2, would be refined. The proposed rule defines BOEM's list of criteria and precursor pollutants by reference to the relevant tables in the USEPA's regulations, thereby ensuring that any changes or additions promulgated by the USEPA would be automatically accounted for in the BOEM regulations.

In addition to accounting for all of the criteria and major precursor pollutants, as required by OCSLA, the proposed rule would result in enhanced collection, evaluation, and consideration of data on such pollutants over a greater variety of time intervals (*i.e.,* averaging times), because BOEM would evaluate air pollutant emissions in terms of the effects, not only on annual pollution levels, but also on pollution levels for the other averaging times the USEPA uses in evaluating SILs, AAIs (MACIs) and NAAQS for CPs, including 1-hour, 3-hour, 8-hour, and 24-hour averaging times. The differing averaging times were established in recognition that higher short-term concentrations of a pollutant can have adverse effects even when the long-term average concentration of the same pollutant falls within relevant annual standards. The proposed rule would better align and coordinate the information gathering and data analysis requirements in BOEM's regulations with similar requirements used by the USEPA and reflected in USEPA requirements and tables. Specifically, under the proposed rule, BOEM would require the use of the USEPA's tables for SILs, AAIs and NAAQS in any circumstance where modeling is required. Thus, any changes to any applicable USEPA AAQSB would automatically be cross-referenced by BOEM regulations and would not require that BOEM amend or update its regulations.

Under the proposed regulations, certain provisions within BOEM's rules would be updated automatically whenever the USEPA makes corresponding changes in:

- The SILs, also known as significant impact levels or significance levels, with the associated averaging times, as defined in 40 CFR 51.165(b)(2);
- The AAIs (*i.e.,* concentration levels of ambient pollutants and associated statistical form), as defined in 40 CFR 52.21(c);
- The primary or secondary NAAQS, as defined in 40 CFR part 50;
- The identification of criteria and major precursor air pollutants, as defined in 40 CFR 51.15(a);
- The list of approved air quality models, as defined in 40 CFR part 51, appendix W;
- USEPA air quality modeling requirements and methodologies, as defined in 40 CFR part 51, appendix W;

- Emissions factors, based on models defined by the USEPA or the FAA, to determine emissions levels for tier- and non-tier-compliant marine and non-road engines and aircraft;
- Reporting timeframes associated with the NEI; and
- Significant emissions rates (SERs) for criteria and major precursor pollutants, as defined in 40 CFR 51.21(b)(23)(i).

Under the proposed rule, certain provisions in BOEM's rule would also be updated automatically whenever the USEPA changes 40 CFR 1043.100 to reflect emissions standards and other requirements applicable to marine engines under Annex VI to the International Convention for the Prevention of Pollution from Ships (as the protocol is defined in 33 U.S.C. 1901), as implemented in the U.S. through the Act to Prevent Pollution from Ships (33 U.S.C. 1901–1915). This protocol is commonly referred to as "MARPOL." The MARPOL standards are part of the federal coordinated strategy to address emissions from vessels adopted by the USEPA which consists of (1) the CAA engine standards and fuel limits for U.S. vessels contained in 40 CFR 80 and 40 CFR 1042; (2) the North American and U.S. Caribbean Sea Emission Control Areas designed by amendment to the MARPOL protocol; and (3) the MARPOL engine emission and fuel sulphur limits that apply to all vessels regardless of flag (see 75 FR 22896, April 30, 2010). BOEM proposes that foreign vessels be allowed to use the MARPOL standards as emission factors for the purposes of the program, if there are no preferred, more accurate alternatives, with certain adjustments.[42] In addition, as the following are modified by the USEPA, BOEM's standards for review of plans and requirements would change correspondingly:

- The attainment or designated non-attainment status of State lands potentially impacted by emissions from OCS activities, as defined in 40 CFR part 81, subpart C; and
- The Class designation of federal, State or tribal lands or waters on or potentially impacted by emissions from OCS activities, as defined in 40 CFR part 81, subpart D.

B. Attributed Emissions

Historically, BOEM has considered two primary sources of emissions in connection with its regulation of OCS air emissions—stationary sources, and non-stationary sources, such as support vessels, over-the-ice vehicles and aircraft. The proposed rule would change the manner in which lessees and operators must consider and model emissions from support vessels and other non-stationary sources. The changes would mean that plans will more accurately reflect how emissions may affect the air quality of States, given improvements in modeling capabilities.

1. Emissions From Stationary Sources

BOEM proposes relatively few changes to what constitutes the kinds of stationary sources of air emissions subject to review and/or regulation. In accordance with OCSLA, all offshore facilities constructed or operating on the OCS must be covered by an approved plan that BOEM has evaluated for compliance with relevant emissions standards. While the proposed rule would retain this basic principle, the proposed rule would expand the definition of facility to address the greater variety of facilities now being constructed. Accordingly, the proposed rule would replace any existing reference to a "drilling unit" with a reference to the broader term "facility" and would clarify that air quality and air emissions information and analysis must be provided with respect to any facility that is proposed to be located on the OCS. Further details concerning the definition of the term facility are provided in the section-by-section analysis of the new or updated definitions listed in section 550.302. The proposed rule would make clear that emissions from decommissioning activities would be included in a facility's projected emissions.

This proposed rule does not specify air quality review requirements associated with the decommissioning or removal of structures on the OCS. BOEM is soliciting information on the most appropriate method for establishing and reporting air quality requirements associated with decommissioning and structure removal activities in the context of the AQRP. This includes a request for information and comment on when and how BOEM should receive air quality emission data and information associated with decommissioning and structure removal and how an assessment of feasible ERM should be applied. One approach on which BOEM solicits comment would be whether it should provide for only the collection of emissions data associated with decommissioning activities for some period of time, followed by a second phase in which BOEM could utilize the data that was previously collected to craft an approach tailored to this unique type of activity.

2. Emissions From Mobile Support Craft (MSC)

In the proposed rule, BOEM would continue to require the collection and evaluation of emissions data related to offshore supply vessels (OSVs) and other support vessels and vehicles (collectively, mobile support craft (MSCs)) for two primary reasons. First, the data remain necessary to accurately model the impact of any given exploration or development project to determine whether the air emissions are likely to exceed the emissions thresholds, and, therefore, to determine whether the air emissions are potentially significant. Second, this proposed rule would allow BOEM to use the data to determine whether emissions associated with a project covered by a plan are at a level such that the planned operations could cause or contribute to a violation of the NAAQS in a State.

BOEM's statutory responsibility to regulate "for compliance with the [NAAQS], to the extent that activities authorized under this subchapter significantly affect the air quality of any State," authorizes BOEM to take into account sources of emissions directly related to OCS operations that have the potential to significantly affect a State's air quality.[43] A portion of the emissions associated with exploration and development of OCS oil and gas come from the MSCs providing support to OCS operations. While MSC operations do not require direct BOEM authorization, their activities and the associated emissions are undertaken pursuant to contracts and orders from lessees and operators engaging in oil and gas exploration and development, which require BOEM's approval of a plan. Without an accounting of these emissions in the plan, BOEM would not know whether emissions that will stem from its approval would have the potential to significantly affect the air quality of any State. Accordingly, BOEM is not proposing to regulate MSC sources directly, but it would continue its current practice of attributing MSC emissions to the approved facilities that the MSCs support. The most feasible, and perhaps only means, of preventing significant effects on State air quality is to require operators to manage the emissions that are closely associated with its operations. In this rule BOEM is proposing to refine the method for attributing these mobile source emissions to facilities.

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[42] Such adjustment would be done in order to take appropriate account the deterioration in performance, based on the age of the equipment and the potential variation of the actual emissions from the standard to account for the maximum potential emissions that the emissions source may emit (as described in section 550.205(b)(2)(vii) of the proposed rule text).

[43] The conference report accompanying the enactment of section 5(a)(8) of OCSLA explained:

> The standards of applicability the conferees intended the Secretary to incorporate in such regulations is that when a determination is made that offshore operations may have or are having a significant effect on the air quality of an adjacent onshore area, and may prevent or are preventing the attainment or maintenance of the AAQSs of such area, regulations are to be promulgated to assure that offshore operations conducted pursuant to this act do not prevent the attainment or maintenance of those standards. The terms "may have" and "may prevent" refer to the Secretarial judgment regarding future consideration of exploration plans, or development and production plans, in which the potential for "significant effect" is analyzed prior to approval and thus commencement of the proposed activities.

See, H.R. Rep. No. 95–1474, at 85–86 (1978) (Conf. Rep.).

Historically, and with cooperation from industry, BOEM followed an approach similar to the USEPA's to account for vessel emissions in the GOM. BOEM's current regulations require that operators report in their plans those emissions from MSCs that occur within 25 miles of a OCS facility. Although the current regulations are not explicit on this point, BOEM's GOM practice has been to add these emissions to the emissions of the facility and compare the total against the exemption thresholds to determine whether modeling and controls are required.[44] BOEM's predecessor agencies chose this approach to be consistent with the approach used by the USEPA.[45]

However there are a number of reasons that attributing all MSC emissions within a 25-mile radius of the facility may not be the best approach. This method of attributing emissions does not provide the most accurate picture of the effects of BOEM's plan approval on the State's air quality. Historically, the vast majority of new OCS operations were located within 50 miles of the shoreline. Thus, the 25-mile facility radius adequately addressed the impact of vessel air emissions on the air quality of States. For facilities located within 25 miles of the shoreline, 100% of all MSC emissions would have been accounted for by this formula. For facilities located 50 miles from the shoreline, roughly 50% of the total MSC emissions would have been accounted for. For facilities located 100 miles from the shoreline, only 25% of the total MSC emissions would be accounted for and at 200 miles distance, only 12.5% of the emissions would be considered. Also, in terms of the potential impact to a State, the most important MSC emissions generally would be those occurring closest to the State. Therefore, although 25% of MSC emissions for a facility located 100 miles from shore may be accounted for under the 25-mile rule, the 75% of emissions that are not considered would likely have a greater impact. According to the formula used in BOEM's current exemption thresholds, 3,300 tons of emissions 100 miles from shore would have an equivalent effect to 100 tons of emissions of the same pollutant 3 miles from shore. Applying this formula, the 25% of emissions within 25 miles of a facility would account for less than 2% of the impact on State air quality, and the portion of emissions from MSCs that occur while the MSC is closer to the State's boundary would have a proportionally larger effect on the State's air.

Historically, facilities in the GOM accounted for the vast majority of the total emissions, with MSC emissions representing only a small share of total emissions. However, in the most recent inventory, BOEM determined that facilities only account for 45% of all OCS emissions associated with oil and gas exploration and production. Also, today, more facilities are being constructed at increasing distances from the shoreline. Today, some are located as far as 200 miles away from shore.

Given these shifts, BOEM believes it is no longer appropriate to utilize a blanket 25-mile radius, because that radius does not capture most of the attributed emissions that occur between a port and the facility. Thus, the importance of accurately taking MSC emissions into consideration has grown substantially. BOEM could not ensure that it has avoided permitting uses of the OCS that would adversely affect the State if its evaluation of OCS projects did not take into account the majority of the relevant emissions.

Additionally, current BOEM analysis treats all emissions from MSCs as if they originate at the facility itself. Improvements in dispersion modeling technology have made it easier to more accurately project impacts of emissions based on where these emissions actually occur. For this reason, it is no longer necessary or appropriate to aggregate emissions from non-stationary sources at one location for purposes of air quality analysis.

Increasingly, lessees and operators are using new types of support vessels, including vessels that operate continuously offshore without having to return to port. When considered along with those support vessels that are unique to the Arctic, either due to its extreme environmental conditions or to the need to make up for the lack of onshore support facilities, it is increasingly evident that the use and types of vessels are substantially different than in the past.

In the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), Congress mandated that BOEM regulate air quality impacts from activities on the OCS adjacent to the North Slope Borough of the State of Alaska along with activities on the OCS in the Central and Western GOM. BOEM must now also consider the potential effects caused by air pollution generated by operations unique to the Arctic region, such as ice breakers and other vessels or vehicles that would not normally be necessary or present in the GOM. The relative proportion of attributed emissions to total emissions (*i.e.*, support vessel emissions relative to facility emissions) is substantially higher in Alaska than in the GOM. This is due to, among several things, the substantial differences in the existing oil and gas infrastructure, the significant variations in climate between the GOM region and Alaska, and the relatively greater need for MSCs (and their higher emissions) to support OCS facilities offshore Alaska. In the Alaska region, a typical ratio of MSC emissions to facility emissions would be in the range of 80% to 20%. Thus, the emissions of ice breakers, oil spill support vessels, trucks that operate over ice and other vessels unique to the Arctic make the need to account for MSC emissions even greater than is the case in the GOM.

Furthermore, those MSCs used in Alaska are of a type whereby they can more readily operate outside of a 25-mile radius of the facility. While supply vessels, crew boats and tug boats cannot easily avoid coming into close contact with the facility they support, this is not true of ice breakers or oil spill support vessels. Such vessels can be and often are located just beyond the 25-mile boundary, sometimes closer to shore than the facility itself. Because, in an Arctic context, the MSCs generate far more emissions than the facilities they support, not accounting for their emissions makes it impossible to appropriately avoid authorizing activity causing or contributing to a violation of the NAAQS.

BOEM is proposing a more accurate standard, namely that the emissions of MSCs should be accounted for while they are actually operating in support of the facility. As long as an ice breaker is engaged in active operations on behalf of a facility (and, in whose absence, the ice breaker would not be used), its emissions should count towards the total emissions resulting from plan approval. Once the MSC is no longer providing support to a facility, its emissions should not be considered as part of the projected emissions in the plan.

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[44] The practice has differed in BOEM's Alaska region during those periods in which the Secretary had air quality jurisdiction over the Arctic OCS. For the Arctic, BOEM's practice has been to require reporting of MSC emissions in the plan, but the Alaska region has not made it a practice to combine those emissions with the facility's emissions to compare against the exemption thresholds.

[45] See sec. 328 of the CAA, 43 U.S.C. 7627, specifies that "emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or *en route* to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source." OCLSA does not mention emissions from such vessels.

In addition to these differences, technological advances with respect to non-stationary source modeling allow more accurate modeling of emissions from non-stationary sources. Unlike the situation in the past, when there was no accurate means to evaluate the emissions of mobile sources in terms of the impact to stationary sources, such modeling can be readily and accurately done today. BOEM believes that it is important to employ the most advanced and scientifically accurate measurements and evaluation techniques of air pollution, in order to most effectively implement its mandate.

For all these reasons, BOEM has reevaluated its historical method of accounting for non-stationary source emissions (*i.e.*, emissions generated from support vessels, vehicles, and aircraft operating on the OCS, or in State waters, that are associated with OCS facilities) and proposes to revise the current practice in both Alaska and the GOM to better address BOEM's mandate. Instead of automatically applying a 25-mile radius, BOEM is proposing to require lessees and operators to report and attribute the MSCs to facilities to which the vessel is actually providing operational support, regardless of its distance from that facility. In the proposed rule, the key is whether an MSC is operating in support of a facility authorized under OCSLA, not how close the MSC it is to that facility. The proposed rule would require all MSCs operating in support of a facility to attribute their emissions to that facility while they provide such support (except in those rare cases where such attribution would be impractical). MSCs that do not provide support to a facility would not be reported, regardless of how close or distant they are. The discussion of proposed § 550.205(d), in the section-by-section description below, sets forth the details of how the proposed rule would require lessees and operators to attribute MSC emissions to a facility, including the allocation of emissions from MSCs servicing multiple facilities (see discussion below).

3. Determination of Attributed Emissions

BOEM is proposing to define the term "attributed emissions" to cover non-stationary source emissions associated with a plan, including, "for any given criteria or precursor air pollutant, the emissions from MSCs and aircraft, operating above the OCS or State submerged lands, that are attributed to a facility."

As described in the discussion of proposed § 550.205(d), in section V below, where an MSC described in a plan also supports one or more facilities not described in a plan, the proposed rule would provide several alternatives for determining the emissions from a vessel or vehicle that should be attributed to the particular facility in the plan. A lessee or operator could always choose to attribute all of an MSC's emissions to a facility regardless of how many facilities it supports. The rule, however, would allow a lessee or operator to attribute only that relevant portion of a vessel's emissions to its facility or facilities. The proposed rule would provide a lessee or operator with a process to attribute only a portion of an MSC's emissions to its facility. This procedure is designed to provide the most detailed, accurate information available about the MSC's emissions. BOEM recognizes that any given lessee or operator may not know at the time of plan submittal, or RUE or pipeline ROW application, the extent to which it will rely on MSCs that also support facilities unrelated to those covered by the lessee's or operator's plan. For this reason, the procedure would allow lessees and operators alternative ways of making conservative estimates of the portion of an MSC's emissions that should be attributed to a facility. The intent of these alternatives is to simplify the process for determining the allocation of support vessel emissions in situations where it would otherwise be impracticable to do so.

BOEM's proposed approach would reduce the potential for over-counting emissions resulting from plan approval compared with BOEM's current practice. Under BOEM's current practice, one hundred percent of the emissions of an MSC are counted when located within 25 miles of a plan facility, regardless of whether that MSC also supports five, ten, or even 20 unrelated facilities within a 25-mile radius of the facility. Under the proposed rule, emissions would be allocated to the appropriate facility in all cases where it would be practicable to do so, in accordance with proposed § 550.205(d). Only in the rare situation where there would be no reasonable basis to make any more accurate allocation would the 25-mile radius analysis remain as a last resort option. Ultimately, BOEM believes there is no reason to hold an operator responsible for emissions based on an emitting MSC's proximity to a facility, but rather it should be required to manage its operations to prevent exceedances of the NAAQS which result from only those MSCs which actually support its operations. Air emissions of an MSC may often occur close to shore, and therefore would cause a greater impact onshore and/or at the SSB, than a similar amount of emissions from that same MSC which occur in the vicinity of the facility. BOEM is seeking comments on this proposed approach and will consider alternative methods that more accurately attribute emissions from mobile sources to the appropriate facility.

4. Exclusion of Aircraft and Onshore Emissions Sources

BOEM also proposes to change its approach to accounting for air pollutant emissions associated with other non-stationary sources. The proposed rule would continue to require lessees or operators to identify all vessels and vehicles supporting a facility and to report their relevant air emissions as part of each plan, as is the case with the current policy. However, BOEM is proposing to change how aircraft and onshore emissions would be addressed.

Although lessees or operators would continue to be required to identify the likely types and number of support aircraft they propose to use, no collection of emissions data for those aircraft would generally be required under the proposed rule, except in exceptional circumstances. BOEM is proposing this change because collecting information on emissions from aircraft that support OCS operations in all plans would be unduly burdensome since aircraft emissions are a small fraction of emissions in most plans and their inclusion would likely not cause a facility's projected emissions to exceed the EETs or any AAQSB in a State where it would otherwise not do so. Available data from plans submitted to BOEM and its predecessors indicate that the level of relevant emissions from aircraft is generally an extremely small percentage of the total emissions reported in each plan. Furthermore, there are a large number of aircraft supporting OCS facilities and these aircraft service more facilities and are used for a wider variety of purposes than MSCs, including for purposes other than supporting oil and gas facilities on the OCS. This makes it cumbersome to accurately quantify and attribute (with respect to OCS support functions) their emissions to individual facilities in a plan in many cases. Accordingly, BOEM believes it is not prudent to require all lessees and operators to report aircraft emissions.

The proposed rule, however, would require a lessee or operator to submit aircraft emissions information to account for the situation in which a plan proposes exceptional or unusual aircraft operations. This provision would cover situations in which a lessee or operator plans abnormally high use of aircraft to support its operations, or the lessee or operator plans to use aircraft that emit exceptionally high amounts of pollutants. In those situations, the proposed rule would require the lessee or operator to determine whether aircraft emissions would cause its projected emissions to exceed an emission exemption threshold or AAQSB. If a plan which is already required to conduct modeling results in incremental increases in concentration of a pollutant that are greater than 95 percent of the value of a SIL, the proposed rule would require the lessee or operator to also model its aircraft emissions.[46]

Likewise, under the proposed rule, lessees and operators would not normally be required to report information on emissions from onshore support facilities. Emissions from large sources onshore are in many cases already identified and regulated by the USEPA, or by the States in the context of their respective SIPs.[47] In addition, under the CAA the USEPA has established standards for several types of mobile sources, no matter where they are operated through requirements that engines, vehicles, and equipment be certified to exhaust emission limits, and through the regulation of certain characteristics of the fuels used in these engines. The proposed rule would not require a lessee or operator to gather or report the emissions generated onshore in support of an OCSLA-authorized activity on the OCS. BOEM has determined in the past and continues to hold that, for purposes of this separate program, such emissions are *de minimis* and that further regulation of them, beyond what already applies or that may be established by USEPA and States under applicable federal and State law, is not warranted. As would be the case with aircraft, however, if a plan describes the use of onshore sources that generate unusually high levels of emissions, such that these emissions could cause the project's total projected emissions to exceed an EET or AAQSB, then the lessee or operator would be required to provide information on its onshore emissions.

While this proposal takes the approach described here for aircraft and onshore emissions, BOEM is considering whether it should instead establish a requirement whereby plans that propose aircraft and onshore emissions above a certain threshold, expressed as either a percent of the total plan emissions or an absolute amount of emissions, would have to include emissions from aircraft and onshore support facilities. BOEM would welcome comments on this approach, and also any data or analysis relevant to the issue of whether, and to what extent, aircraft and onshore emissions should be considered in evaluating a facility's emissions profile.

Please provide comments on this approach and what threshold might be most appropriate.

C. Points of Measurement

1. Point-of-Origin Measurement

Historically, BOEM applied "point source" modeling to plans for facilities and their MSCs. Point source modeling evaluates all emissions associated with any source as if they originated from a single location, regardless of whether that source is stationary (*e.g.,* a drilling unit or platform) or non-stationary (*e.g.,* a supply vessel). The term "point source" refers to the location from which the pollutants are discharged, not the location at which the impacts from the emissions are measured or evaluated (referred to as receptor locations). In the case of a stationary facility, point source modeling is appropriate because it accurately reflects where the emissions are occurring.

With respect to non-stationary sources, however, point source modeling is much less accurate because the actual emissions generated by such a source are discharged over a broad area. BOEM's regulations currently do not address the appropriate types of models to use to account for emissions from non-stationary sources, although some operators already model non-stationary emissions sources as (1) area or line sources; (2) volume sources; or (3) so-called pseudo-points (*i.e.,* some mobile sources are modeled as if their emissions originated at one or more stationary points).[48]

MSCs operating in support of facilities on the OCS typically discharge emissions continuously between the port and the facility. BOEM believes line and volume source modeling for non-stationary sources would accurately project the impact of emissions from such MSC on onshore air pollution levels at the SSB. The improved accuracy and information value from line and/or volume source modeling of pollutant dispersions would provide BOEM a more realistic projection of actual impacts on the air quality of a State.

With volume source modeling, it is also possible to more accurately model the effect of emissions discharged by non-stationary sources on fixed landscapes (*i.e.,* land, mountains, lakes, etc.), taking into account relevant factors, such as air pressure, currents, winds, and temperatures in relation to the discharge of pollutants and their ambient distribution at distant locations. With improved ambient air quality dispersion data, air quality impacts can be evaluated more effectively. BOEM requests comments on the various types of modeling that could or should be used to more accurately reflect the origin and dispersion of emissions that are generated by mobile sources, such as MSCs, and under what circumstance volume source modeling would be appropriate or inappropriate.

2. State Seaward Boundary (SSB)

In developing this proposed air quality rule, BOEM revisited an issue it encountered while drafting its 1980 air quality regulations: Whether air quality impacts should be evaluated starting at the shoreline or at the SSB, which is typically three nautical miles offshore, but which may be as much as nine nautical miles offshore depending on the particular State. On the basis of BOEM's interpretation of its statutory authority, BOEM has concluded that it is more appropriate to measure at the SSB than at the shoreline.

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[46] BOEM expects that aircraft emissions typically represent less than two percent of all plan emissions, and that any plan with emissions below 95 percent of the value of every SIL, excluding aircraft emissions, would be extremely unlikely to generate total emissions, even if including those from aircraft, in excess of any SIL; therefore, modeling of aircraft emissions would normally not be required.

[47] USEPA regulates these sources to the extent they are in source categories subject to New Source Performance Standards (NSPS) or National Emissions Standards for Hazardous Air Pollutants (NESHAP) coverage. States regulate them to the extent they are covered in their State NSPS plans, have taken delegation of NESHAPs, or have chosen to regulate them in order to meet criterial pollutant NAAQS or under NSR.

[48] In line-, area-, and volume-source models, the emissions are modeled as if they are emitted evenly and continuously across a line, area, or volume. In point source models, some emissions may be modeled as if they are emitted from many discrete points along a path or over an area.

Section 5(a)(8) of OCSLA requires DOI to regulate "for compliance with the national ambient air quality standards pursuant to the CAA (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under [OCSLA] significantly affect the air quality of any State" (43 U.S.C. 1334(a)(8)). BOEM historically interpreted the phrase "significantly affect the air quality of any State" to limit it to considering those effects that would occur landward of the shoreline. BOEM thus historically has evaluated any OCS activity in terms of the effects of that activity on the concentration of pollutants landward of the shoreline.

BOEM has re-evaluated this position. BOEM believes the term "State" in section 5(a)(8) of OCSLA should be interpreted to include the entire area of a State's jurisdiction extending to its seaward boundary (either three or nine nautical miles seaward of its shoreline). (*See* 43 U.S.C. 1312.) Moreover, the States are responsible for attainment of the NAAQS over the entirety of the State including their submerged lands. The USEPA interprets the CAA consistently with BOEM's interpretation under this proposed rule. Generally, the USEPA requires States to regulate their air quality up to their seaward boundary. For instance, the USEPA does not allow States to permit an onshore or offshore source that would cause the air quality above State submerged lands to exceed an applicable AAI. In addition, the secondary NAAQS are specifically intended to protect public welfare. Impacts to the air quality above State submerged lands have the potential to adversely affect a range of natural resources, such as marine mammals, coral, fish, etc. that are included in the category of resources protected under the secondary NAAQS. For these reasons, BOEM believes that its regulations should ensure that OCS facilities not cause or contribute to a violation of the NAAQS in any area of a State up to the State's seaward boundary.

The USEPA has advised BOEM that a variety of environmental and scientific studies have shown that changes in air quality have also caused impacts to human health off the coast in near-shore areas. For example, these include specific health impact studies for the NAAQS, as well as port air quality analyses that show the impacts of emissions from ships and diesel engines, diesel emissions studies (health effects and ports)),[49] information regarding environmental justice populations in coastal areas,[50] impacts to subsistence fishing on fishing piers that extend into the near-shore areas,[51] and the sensitivity of native Alaskan populations.[52] There also are studies that trace the emissions from offshore and onshore sources to near-shore and onshore areas. Although the available data are not yet conclusive, BOEM proposes to consider and evaluate the impacts of air pollution over State submerged lands,[53] including Alaska.[54]

Though the proposed rule would impose stricter requirements than exist under the current BOEM regulations, BOEM's requirements would still differ from those of the USEPA. In accordance with section 328 of the CAA, the USEPA requires, in areas where it has jurisdiction, that any facility located on the OCS within 25 miles of the State seaward boundary is subject to all the requirements of 40 CFR part 55. These include, but are not limited to, the federal requirements as set forth in 40 CFR part 55.13 (*e.g.,* NSPS, NESHAPs and permitting requirements) and the federal, State and local requirements of the corresponding onshore area, and the area that is geographically closest to the source or another onshore area that the USEPA Administrator designates (40 CFR 55.14).

BOEM welcomes comments and analysis on the potential impacts of emissions generated from OCS sources on the air quality over State submerged lands and/or the potential impact of such emissions on the environment above such lands, as well as any scientific, technical, or other information that can be provided to measure or evaluate the impact of OCS-originated air pollutants on the area over State submerged lands.

3. Point-of-Impact Measurement

Although current BOEM regulations provide that measurements of any potential impacts of OCS emissions take place along the shoreline, they do not specify from which point along the shore the emissions should be evaluated when modeling is required. Because of this, it has generally been assumed the ambient concentrations should be evaluated at the point on the shoreline closest to the facility. This interpretation of the proper approach is reinforced by the formula used for the exemption threshold analysis, which requires operators to calculate the closest distance between the facility and the shoreline. BOEM has published instructions and a guidance document for BOEM forms BOEM–1038 (Gulf of Mexico Air Emissions Calculations for EPs) and BOEM–1039 (Gulf of Mexico Air Emissions Calculations for DOCDs), stating the measurement point (for the purposes of calculating the distance parameter in the emission exemption threshold formulas) should generally be the closest point of land. See BOEM Web site, "Reporting Instructions," *available at http://www.boem.gov/BOEM-0138-instructions/*, and "Tips to Avoid Common Emissions Spreadsheet Errors," *available at http://www.boem.gov/Form-0138-and-0139-Tips/*. This approach works well in the GOM, considering wind patterns and other relevant meteorological conditions.

In evaluating meteorological data within the parts of the Chukchi Sea OCS bordering Alaska, however, BOEM recognizes prevailing wind patterns are often not from sea to shore (*i.e.,* from north to south) but rather move at an angle, either from the northwest to southeast or from the northeast to the southwest. Because of this, the point at which the air emissions released from a facility would have the greatest effect (*i.e.*, yield the highest pollutant concentration) may be much farther along the State's boundary than the closest point on that boundary. In order to accurately model the potential effects of any given air pollutant on a State, therefore, it is important that the effects of such air emissions be evaluated not at the closest point of the State but rather where the concentrations of emissions would be the highest (*i.e.*, where the potential impacts would be the greatest).

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[49] "USEPA, Regulatory Impact Analysis: Control of Emissions of Air Pollution from Category 3 Marine Diesel Engines, EPA–420–R–09–019, December 2009." Available at: *http://www.epa.gov/otaq/regs/nonroad/marine/ci/420r09019.pdf.*

[50] See Shell permits for:

(1) Kulluk: *http://www.epa.gov/region10/pdf/permits/ocs/shell/kulluk/SoB_Draft_072211_Public_Comment.pdf,* and *http://www.epa.gov/region10/pdf/permits/shell/kulluk/SoB_Environmental_Justice_Analysis_Kulluk_072211_Public_Comment_07-19-2011.pdf.*

(2) Discoverer: *http://www.epa.gov/region10/pdf/permits/shell/discoverer_supplemental_statement_of_basis_chukchi_and_beaufort_air_permits_070111.pdf* and *http://yosemite.epa.gov/oa/eab_web_docket.nsf/Filings%20By%20Appeal%20Number/4BB1D10E49B2C0F585257934006FEFB8/$File/Final%20Attachment%204...11.pdf.*

[51] Wolfe, R.J. 2004. Local traditions and subsistence: A synopsis of twenty-five years of research in Alaska. Technical Paper No. 284. Alaska Department of Fish and Game, Division of Subsistence, Juneau, Alaska.

[52] See Wernham, Inupiat Health and Proposed Alaskan Oil Development: Results of the First Integrated Health Impact Assessment/Environmental Impact Statement for Proposed Oil Development on Alaska's North Slope, 2007; and Alaska Native Health Status Report 2009 *http://www.anthc.org/chs/epicenter/upload/ANHSR.pdf.*

[53] Although there are likely no particular studies that deal with air pollution impacts specifically on the area over State submerged land, the Statement of Basis (SOB) for the Shell permits discusses these concepts as part of the air quality impacts analysis for these permits. These SOBs also have appendices that go into more detail about the air quality impact analysis.

[54] Specifically with respect to the Alaskan OCS, the USEPA prepared the following document on the OCS air quality impacts: "Technical support document review of Shell's supplemental ambient air quality impact analysis for the Discoverer OCS permit applications in the Beaufort and Chukchi seas," United States Environmental Protection Agency, Region 10, Seattle, Washington, June 24, 2011.

See also, http://www.epa.gov/region10/pdf/permits/ocs/shell/kulluk/SoB_AppA_AQIA_072211_Public_Comment.pdf.

See also, http://www.epa.gov/region10/pdf/permits/ocs/shell/kulluk/SoB_AppA_AQIA_072211_Public_Comment.pdf. In addition, similar analyses have been done by the USEPA's Region 4 in connection with the issuance of OCS permits there. The SOB's in Region 4 are known more generally as preliminary determinations and all can be found at: *http://www.epa.gov/region4/air/permits/ocspermits/ocspermits.html.*

Because of this, the proposed regulations specify the effects of emissions, for modeling purposes, would be evaluated at those locations in the State(s) where the concentration of any given pollutant is expected to be the highest. Additionally, the effects of emissions would be evaluated in the non-attainment area where the concentration of any given pollutant is expected to be the highest among non-attainment areas for that pollutant (if different from the most affected area). This location might be on land or over State submerged lands. That location in the model would likely be the same for many, but not necessarily all, pollutants. Those air pollutants, such as O_3, that are not directly emitted by a facility, but are instead created in the atmosphere, are often more heavily affected by climatological or meteorological conditions, which often cause them to concentrate at a location different than other air pollutants. Given technological advances, BOEM does not anticipate that adding additional hypothetical receptor locations to the modeling should present any technical difficulty but welcomes comments on how this requirement could be implemented most effectively.

4. Ambient Air Quality Monitoring

Monitoring is a general term for on-going collection and use of measurement data or other information for assessing performance against a standard or status with respect to a specific requirement. In general, there are two basic types of monitoring:

- Ambient air quality monitoring, which collects and uses measurement data (or other information) from onshore monitoring stations or remote sensing); and
- Emissions source monitoring, which involves collecting and using measurement data (or other information) at individual stationary sources of emissions (*i.e.*, facilities, RUEs, pipeline ROWs, etc.) to verify actual emissions of such sources, and validate the effectiveness of ERM.

Thus, ambient air quality monitoring is the systematic, long-term assessment of pollutant levels by measuring the quantity and types of certain pollutants in the surrounding, outdoor air, whereas emissions source monitoring is the process of monitoring particulate and gaseous emissions from a specific source.

Air quality monitoring is carried out to assess the extent of pollution, ensure compliance with national legislation, evaluate control options, and provide data for air quality modeling. There are a number of different methods to measure any given pollutant, varying in complexity, reliability, and detail of data. These range from simple passive sampling techniques to highly sophisticated remote sensing devices. In general, monitoring strategies should carefully examine the options to determine which methodology is most appropriate, taking into account the initial investment costs, operating costs, reliability of systems, and ease of operation.

Air quality monitoring stations are the most typical means for obtaining ambient air quality information. The locations for monitoring stations may depend on the purpose of the monitoring. Most monitoring networks are designed with human health objectives in mind, and monitoring stations are therefore established in population centers. Many governments (local, regional or national) give specific guidelines on where to monitor within these areas—next to busy roads, in city center locations, or at a location of particular concern (*e.g.*, a school, hospital). Background monitoring stations are also established, to act as a "control" when determining source apportionment.

Once data are collected from a monitoring system, they are then stored in data management systems and databases. Subsequently, the data must be retrieved and analyzed to see what they reveal about the effectiveness of regulatory standards, the accuracy of modeling, impacts on health endpoints, and as an overall way of assessing potential impacts. In the U.S. these ambient air quality monitoring data are collected and housed in the Air Quality System (AQS). The AQS contains ambient air pollution data collected by the USEPA, State, local, and tribal air pollution control agencies from thousands of monitoring stations. AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator), and data quality assurance/quality control information.

BOEM has relied on the USEPA's AQS data to determine the relevant ambient air quality on which lessees and operators perform their analysis of the AAI's and the NAAQS in connection with their submission of plans and to comply with BOEM's air quality requirements in areas under BOEM's air quality jurisdiction. BOEM has proposed that it should evaluate the air quality of States to the State seaward boundary. There are, however, few monitoring stations in relevant locations on the coast and no monitoring stations in the ocean along the SSB. To improve the accuracy of the estimates of the background concentrations of the relevant pollutants, BOEM is investigating various alternatives for collecting, utilizing and disseminating this information, including technologies such as remote sensing and spectral analysis, and is proposing flexibility to adopt such approaches in the future. The proposed rule would allow BOEM the flexibility to consider adopting such approaches that meet the proposed standard for effectiveness. Otherwise, the relevant background concentrations would be obtained from the relevant USEPA regional office, as is the case today.

D. Emission Exemption Thresholds (EETs)

Consistent with the current rule, the proposed rule would define EETs as the maximum allowable rate of projected emissions, calculated for each air pollutant, above which facilities would be subject to the requirement to perform modeling. Functionally, these EETs would establish those levels of projected emissions below which BOEM has determined they would not cause or contribute to a violation of the NAAQS or the AAIs. Under the proposed rule, if the USEPA revises a NAAQS, or any applicable SIL or AAI, BOEM would examine the appropriateness of its EETs,[55] and, BOEM, at its discretion, would periodically revise its exemption formula(s) or its exemption threshold amount(s) for the corresponding air pollutant(s). Because USEPA has recently revised many NAAQS, the proposed rule would allow revision of the exemption formula(s) to reflect these revisions, without waiting for further revisions to trigger a review under this update scheme.

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[55] The purpose of the EETs is to establish thresholds below which BOEM believes there is no reasonable possibility that BOEM's approval of a plan would cause a violation of any AAQSB in any State. The EETs are intended to avoid forcing lessees and operators to perform unnecessary air quality modeling in situations where no benefit from such modeling could reasonably be anticipated.

The current EETs would continue in place under the proposed rule until the relevant air quality studies have been completed and new EETs, if necessary, are developed and implemented. At a future point in time, but no later than 2020, BOEM will propose new exemption thresholds for the GOM and Alaska OCS Regions by publishing a FR notice. Subsequently after reviewing comments on the notice, BOEM could finalize new exemption thresholds with another FR notice.

Consistent with the current rule, the proposed rule provides that, if the projected emissions associated with a proposed facility are exempt, then the lessee or operator would not be required to perform air quality modeling described in proposed § 550.304, or to apply any emission reduction measure(s) (ERM), as described in proposed §§ 550.305 through 550.307.

New EETs are not being proposed in this proposed rule because the scientific basis for determining the potential impacts on the States of OCS emissions have not yet been established. The proposed rule, however, would set a new policy governing how BOEM establishes emission exemption thresholds in the future. Specifically, the proposed rule would provide that BOEM would, sometime after the rule becomes effective, publish new proposed EETs in the FR and provide the opportunity for public comment. In the proposed rule, BOEM has included a range of EETs within which BOEM may establish updated EETs for each pollutant.

As long as the new thresholds fall within the exemption threshold ranges proposed in this rule, BOEM would not implement them through a separate rulemaking, though the new thresholds would not become final until after BOEM received public comment. If, however, the proposed thresholds were to fall outside these ranges, BOEM would implement them through a separate rulemaking. A range would be established for each criteria or precursor pollutant. The proposed rule would establish both maximum and minimum emissions formulas for each pollutant, above and below which, respectively, BOEM would not set new emissions thresholds without conducting a new rulemaking process. As a result of the new environmental exemption studies, which have previously been described, a new set of formulas will be developed to update the EET formulas currently in place. On an ongoing basis thereafter, BOEM would update the EETs to reflect changes in the NAAQS, SILs, and AAIs; advances in measurement and modeling technology; changes in pre-existing pollution levels in the potentially affected States; and various other factors. The current exemption threshold formulas take the distance of the facility from the State into account because dispersion modeling would indicate the impacts are likely to be lower as the distance involved becomes greater. The proposed formulas for these minimums represent emissions levels below which the ambient air impact at the nearest point in a State would not exceed any SIL, taking distances into account. However, there may be a more appropriate manner in which to establish the minimums. For that reason, BOEM requests comments on the EET formulas and the underlying analysis used in this rulemaking or whether absolute values may be more appropriate. Until such time as BOEM has determined new EETs and has published them in the FR ("the date of the Notice"), the distance component of the emissions exemption calculation would continue to be the distance of the facility from shore. After the date of the Notice, each distance formula would instead utilize the distance of the facility from the SSB.

After the date of the Notice, the lessee or operator would be required to apply the new set of formulas for the EETs in effect at that time (*i.e.*, to determine whether projected emissions would be exempt from further analysis). BOEM would use the following criteria to determine the EET formulas: The absolute level of projected emissions; the distance of the proposed facility or facilities from any State or from critical natural resources, animals, fish and habitats; the relative need to protect public health and welfare and the existing amounts of air pollution in potentially affected States; the types, frequency and duration of any air pollutant emissions and their formation and/or dispersion characteristics; prevailing meteorological characteristics; any USEPA AAQSB applied in this proposed rule; other facilities and vessels located in the vicinity of the proposed facility; and other necessary and appropriate considerations. Until BOEM has established new formulas based on these criteria, the proposed rule would provide that projected emissions are exempt if they are below the current exemption formulas.

The intent of those provisions that would allow BOEM to modify the EETs is to ensure that the exemption thresholds accurately reflect the amounts of potential emissions that could adversely affect a State. Because the NAAQS are subject to change as scientific knowledge improves and because modeling techniques and methods may improve over time, the emission exemption threshold formulas should also be subject to change. Under the proposed rule, BOEM would revise the EETs on an ongoing basis either as a result of a change in an applicable standard or because BOEM's ability to measure and evaluate the impact of existing EETs has improved.

E. Emissions Reductions Measures (ERM)

1. Emissions Credits and Offsets

Current regulations specify that BACT should be implemented as the first and primary emissions control mechanism any time that a proposed facility is estimated to exceeded a SIL. This BACT requirement was meant to ensure consistency with the USEPA regulations as they existed when the regulations were issued in 1980.

BOEM's rationale regarding this point has evolved to allow for greater flexibility, while still protecting the air quality of neighboring States. Under the proposed rule, if the projected emissions associated with a proposed OCS facility exceed an AAQSB, operational controls would be the first option to be considered. Operational controls, such as limiting the hours of operation or operating at a higher level of engine efficiency could be both more cost effective and more successful in reducing incremental emissions, particularly in those situations where the proposed exceedances are small. As an alternative, lessees and operators would have the option of replacing old or inefficient equipment with newer and less polluting equipment. This could involve, for example, replacing a diesel engine with a natural gas powered engine. If these options were not sufficient, other ERM, including BACT and emissions credits, would then be considered.[56]

One change in this regard relates to emissions credits. Under the current rule, offsets can only be used once the relevant BACT has been deemed inadequate. Even then, the current rule provides no guidelines as to how offsets might apply in situations other than to offshore facilities. Other forms of emissions credits, such as emissions trading, acquiring of trading program allowances and so forth, are not addressed by the current regulation.

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[56] The BOEM provision allowing for equipment replacements is contingent on the lessee or operator complying with all other applicable federal regulations, as noted in the proposed regulation in section 550.309(f).

Under the proposed rule, emissions credits, which would include offsets, are defined as: "Emissions reductions from an emissions source(s) not associated with the plan that are intended to compensate for the excessive emissions of criteria or precursor air pollutants, regardless of whether these emissions credits are acquired from an emissions source(s) located either offshore or onshore, including: (1) Emissions offsets generated by the lessee or operator directly; or (2) emissions offsets acquired from a third party; or (3) trading allowances or other alternative emission reduction method(s) or system(s) associated with a market-based trading mechanism, such as a mitigation bank, or through other competitive markets where these assets are exchanged." Essentially this means that emissions credits consist of any form of emissions reduction, regardless of whether such reductions consist of physical or operational controls on non-plan facilities (*i.e.,* facilities other than those covered by the proposed plan), or whether they consist of the use of market-based mechanisms that involve reductions achieved through third parties. Under the proposed rule, emissions offsets could consist of BACT applied by a lessee or operator to another one of its own, previously approved, facilities on the OCS.

The proposed rule would therefore considerably increase the mechanism by which emissions reduction could be achieved. Under the proposed rule, in cases where operational controls would not be sufficient to achieve the required emissions reductions lessees and operators would be able to utilize emissions credits, as opposed to applying BACT to a facility in the proposed plan. The proposed rule would also provide that lessees or operators who submit plans that include emissions credits demonstrate that the operator has notified the relevant State and that emissions credits be verifiable.

The selection of emissions credits in lieu of BACT would often result in both a net cost savings and a net environmental benefit. The savings would result from the greater flexibility afforded lessees and operators to make the reductions either on their facility, on another facility (either on the OCS or in waters above State submerged lands), on some unrelated stationary emissions source onshore, or through acquiring the emissions credits from a third party. Because older, higher polluting facilities whose emissions would be easiest to reduce are most frequently located on or near the shoreline, in most cases the use of emissions credits would involve a reduction in the emissions from an onshore stationary source or from an older oil and gas facility located offshore in waters above State submerged lands.

Under the current regulations, offsets are only permitted if they would cause a reduction of emissions on the OCS with respect to the facilities covered by the proposed plan. Under the proposed rule, any reduction in emissions that is accomplished within the same USEPA air quality control region (AQCR)[57] would be an acceptable emissions credit. Thus, if a facility associated with a proposed plan were required to reduce its emissions by 100 tons of NO_X per year, such a reduction could be generated from any other source within the relevant AQCR, whether the source of that reduction is located on the OCS, over State submerged lands, or onshore, and regardless of whether the source of the reduction is stationary, such as a facility, or mobile, such as an MSC.

As currently defined, the AQCR boundaries do not extend to include the OCS and, for this reason, it may sometimes be difficult to determine which AQCR would be most applicable. BOEM also recognizes that some AQCRs are very large, so it may not be certain that offsets in one part of the AQCR have a benefit to the area affected by offshore emissions. BOEM requests comments on how to best to define the relevant AQCR(s) and on whether there may be more appropriate alternative to defining the offset-generating areas or how to best refine the approach of applying AQCRs in this context.

The use of emissions credits in lieu of BACT would provide a net environmental benefit because the use of emissions credits would typically involve a reduction in emissions onshore or over State submerged lands, at that point where the impact to State air quality is greatest, rather than on the OCS, which might be far away from the point at which any impact might be felt. For example, if an OCS facility located 30 miles offshore were to be required to reduce its emissions of NO_X by 200 tpy, under the current regulations that reduction would have to be achieved primarily by reducing the emissions from the facility itself. As a result, the 200 TPY reduction in NO_X emissions from an OCS source might avoid the same amount of ambient NO_X at the shoreline that would be avoided by only 20 TPY reduction in emissions at the shoreline. Given the greater flexibility provided by the proposed rule, if a lessee or operator instead decided to instead pay an onshore power plant to reduce its emissions by the same 200 TPY of NO_X, the net impact to the State would be a reduction in onshore emissions of 200 TPY. Thus, the same reduction in NO_X emissions could have a much greater positive environmental impact. For more details on the offset requirements, see the section-by-section analysis for section 550.309(e).

Furthermore, because the proposed rule does not prohibit the joint acquisition of emissions credits, the proposed rule would allow emissions credits to be obtained and divided among multiple lessees or operators (presumably located near to one another in the vicinity of a State) in order to potentially spread the costs of complying with air quality requirements.

2. Applicability of Best Available Control Technology (BACT) Upon an Exceedance of the Significant Impact Levels (SILs)

BOEM's current regulations require that any proposed plan that identifies projected emissions of air pollutants that would result in an exceedance of the SILs onshore is required to implement BACT (30 CFR 550.303(g) and 303(h)). Under existing BOEM regulations, "Best available control technology" or BACT means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The BACT is required to be verified on a case-by-case basis by the Regional Supervisor and may include reductions achieved through the application of processes, systems, and techniques for the control of each air pollutant.

Under the proposed rule, the evaluation of the SILs would not automatically trigger the requirement for BACT. In fact, BACT would never be the only possible ERM. Under the proposed rule, emissions credits including offsets would always be available as an alternative. The proposed rule would generally limit the requirement to apply BACT and/or offsets (or, more generally, emissions credits) to situations where the SILs exceedance relates to a non-attainment area. For a long-term facility whose emissions affect only attainment areas, BACT and/or offsets would be required only if a further analysis indicates that the SIL exceedance, taken in combination with all other facilities located in the same general vicinity, would potentially cause an increase in the concentrations of a relevant air pollutant that would endanger the attainment status of some area in any State by exceeding the AAIs. In all other cases, when the AAIs are not exceeded, the proposed rule would not generally require further ERM.

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[57] An air quality control region (AQCR) is an area, designated by the USEPA, that has common air pollution issues and which is likely to be affected by the same sources of air pollutant emissions. See 42 U.S.C. 7407. The term AQCR is defined at 40 CFR 51.100(m) and in 40 CFR 60.21(i). The current AQCRs are defined in the USEPA regulations at 40 CFR part 81 subpart B.

For long-term facilities whose emissions affect a non-attainment area, where an exceedance of the relevant SILs would trigger the requirement for more extensive controls, BOEM expects that lessees and operators would likely choose emissions credits in all but a few cases (likely limited to those rare situations where localized control equipment would be the only effective way to prevent the facility from adversely affecting the attainment status of an onshore area).

3. ERM Evaluation Criteria

If the modeling results show impacts that are higher than the SILs, ERM would be required as specified in § 550.306, for a short-term facility, or as specified in § 550.307, for a long-term facility. Current BOEM regulations require that any operator subject to controls (because its emissions are projected to exceed the SILs as defined in BOEM's regulations) must conduct a BACT analysis, and that BOEM must evaluate the amount of emissions reductions that each available emissions-reducing technology or technique would achieve, as well as the energy, environmental, economic and other costs associated with each technology or technique. The current regulations do not, however, specify explicitly that each lessee or operator evaluate all the potentially effective forms of BACT and do not therefore require a consideration of all the feasible alternatives. This section describes the methodology in this proposed rule for determining what forms of ERM would be required for any given plan.

Under the proposed rule, a lessee or operator would be required to identify all of the potentially feasible forms of ERM and rank them according to their potential effectiveness. Only those situations where a potentially more effective ERM is infeasible[58] would such an operator be allowed to propose less potentially effective forms of ERM.

The proposed rule would provide a two-stage procedure for analyzing and selecting ERM, when required, based on modeling results. First, the lessee or operator would identify all the alternative control technologies available and determine their technical feasibility. Second, the lessee or operator would rank and choose specific control technologies. Although these two stages are implicit in BOEM's current regulations, they are stated explicitly for the first time in this proposed rule.

The purpose of this approach would be to ensure that the types of ERM considered would be those that would have the greatest potential to reduce the amount of emissions. The first stage in the process would require lessees and operators to consider all technically feasible control technologies (and not submit a plan that fails to mention feasible options). No lessee or operator could propose only control technologies that would either be largely ineffective (but inexpensive to implement) or cost prohibitive (so they could be discarded) to avoid selecting a cost effective and technologically effective form of ERM. The second stage would require operators to demonstrate the selected ERM is the most effective control technology that could be implemented cost effectively. Under the proposed rule, the most effective technology would always be considered, so it would be implemented unless it was found not to be cost effective.

The effectiveness of any given form of ERM would be measured in terms of the total number of tons of a pollutant that would be reduced on an annual basis. The cost effectiveness would be the annual tonnage reduction estimate divided by the cost. Thus, cost effectiveness would represent the cost per ton of pollutant emissions averted through the application of ERM. Both the amount of emissions reduced and the cost effectiveness of any proposed or potential ERM can be evaluated for any given pollutant or based on the total reduction in all relevant pollutants, depending on which pollutants need to be reduced.

Determining cost effectiveness would require considering the benefits to be achieved from emissions reductions against the costs that would be incurred to achieve those benefits. Accordingly, cost effectiveness means the absolute effectiveness of the technology (in terms of tons of emissions avoided), and its emission control efficiency (ECE) (percentage reduction) compared to the total potential cost of the technology. All of the costs and benefits of any potential control would be considered in determining what constitutes a cost effective emission reduction measure and what would, therefore, constitute viable ERM.

Although not stated explicitly, the current regulations allow a lessee or operator to apply no controls whatsoever when its "proposed" BACT is claimed to be unfeasible. The proposed rule would make explicit that technically feasible controls would always be required but would allow much greater flexibility in how the relevant ERM are determined and evaluated. Once the required emission reduction measure(s) (ERM) are identified, a lessee or operator would be required to thoroughly describe the emissions reduction controls it proposes to apply. The rule would also provide specific provisions governing the sufficiency and effectiveness of these measures and require a lessee or operator to monitor its continual effectiveness over the duration of the plan under reasonably foreseeable circumstances.

The proposed rule would also explicitly articulate requirements for ERM that are implicit in the current regulations. The proposed rule would retain the term BACT, though the definition would be rewritten for clarity. In maintaining a "performance-based" approach to the proposed rule, BOEM is not proposing specific types of BACT, technical standards, or ERM. BOEM is seeking comment on whether it should identify various forms of ERM that have been approved in other situations, whether by BOEM, the USEPA or another regulator, and whether BOEM should provide additional specificity on how to determine the most appropriate form of ERM and/or what cost effectiveness would be considered presumptively reasonable in making such a determination. All of these issues could be addressed in the context of establishing criteria for what may constitute "presumptive BACT" or presumptive ERM. BOEM invites comment on whether BOEM should adopt presumptive ERM and, if so, what processes it should use for adopting and updating the various forms of presumptive ERM that are suggested or approved.

Section III of USEPA publication entitled "PSD[59] and Title V Permitting Guidance for Greenhouse Gases," [Office of Air Quality Planning and Standards, Air Quality Policy Division, Research Triangle Park, NC, EPA–457/

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[58] In the case of BACT, the cost effectiveness of every option must be considered and any alternative that is not cost effective (in terms of the emissions reductions achieved) may be excluded as non-viable.

[59] PSD stands for Prevention of Significant Deterioration.

B–11–001, March 2011] describes the USEPA's process for determining the appropriate use of BACT.[60] BOEM has examined the USEPA approach and intends to take these guidelines into consideration in developing its own guidelines for ERM, as well as for making a determination as to the viability and cost-effectiveness of alternative forms of ERM "taking into account energy, environmental, and economic impacts and other costs." Because BOEM intends to publish its own ERM guidelines, it solicits comments on the USEPA's approach and the underlying methodology for making the determination as to what forms of ERM may be most appropriate under various circumstances, as well as comments on why or under what circumstances the USEPA approach may or may not be appropriate to the OCS environment and how the ERM requirements could be best tailored to the unique conditions of the offshore oil and gas industry.

4. Nitrogen Oxides (NO_X) Waiver and Volatile Organic Compounds (VOC) Waiver

There are situations where the increase in a given precursor pollutant will not contribute to an increase in the ambient air concentration of the CP for which it is a precursor. That situation is particularly important in the case of NO_X and VOCs, which are both precursors for O_3. The USEPA has recognized that, under certain circumstances an increase in NO_X or VOC may have no effect on the formation of O_3 in the tropospheric atmosphere and may, in fact, actually cause a decrease in O_3 formation. The degree to which a change in the emissions of NO_X or VOCs would contribute to O_3 formation in the atmosphere is referred to as the O_3 efficiency. Because there are situations where an increase in NO_X or VOCs would have no negative or even a positive effect, BOEM is proposing to exempt a facility from reducing its emissions of these precursor air pollutants in such situations. Generally, VOC emissions must be greater than NO_X emissions to trigger O_3 formation. A ratio of VOCs to NO_X of 4:1 to 16:1 is within the range where O_3 forms.[61]

The USEPA allows the issuance of a "NO_X Waiver" for areas where limiting NO_X emissions does nothing to decrease O_3, and in some cases, can actually increase O_3. A "VOCs Waiver" could similarly be issued in the reverse case (*i.e.,* where there is already too much VOC in the atmosphere to further contribute to the production of O_3). The proposed rule would adopt a similar approach and limit the mandate to reduce NO_X and VOC emissions, for the purpose of limiting O_3 formation, to those situations where the limits would be effective. Because atmospheric conditions change over time, the rule would also propose that, in the event that a facility is waived from controlling NO_X as a precursor to O_3, or from controlling VOCs for controlling O_3, BOEM could re-impose the requirement to set up ERM at some future date, if BOEM determined that the waiver was not having the intended effect.

F. Consolidation of Emissions From Multiple Facilities

The proposed rule would require a lessee or operator to combine projected emissions from its multiple facilities under certain circumstances in order to evaluate whether the close placement of multiple facilities operating at the same time could jointly cause or contribute to a violation of the NAAQS. This proposed requirement would only apply to facilities that are wholly or partially owned, controlled or operated by the same entity, and is designed to prevent a single entity from segmenting its operations into multiple plans to avoid exceeding EETs. Emissions from nearby facilities that are not wholly or partially owned, controlled or operated by the same entity would be reviewed in the context of the relevant NEPA analyses.

BOEM's current practice is to require, in specific circumstances, the consolidated analysis of facilities covered by multiple plans in accordance with the following provision of § 550.303(j): "If, during the review of a new, modified, or revised Exploration Plan or Development and Production Plan, the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether emission control measures are necessary." The current regulations do not specify under what circumstances the Regional Supervisor would make such a determination.

This proposed rule recognizes the fact that the emissions from two or more OCS facilities located in close proximity to one another may have an adverse impact on the air quality of a State even if the individual EETs, considered separately, would indicate that that facility should not cause an adverse impact to the air quality of a State. This would generally only be true in the situation where two or more facilities were operated contemporaneously, however. Closely-grouped facilities that emit pollutants at the same time can affect the air quality of a State differently than facilities that are spread across a larger area because the emissions would be more concentrated and would, correspondingly, cause a greater concentration of air pollution within a neighboring State. Accordingly, the proposed rule would require consolidation to prevent a lessee or operator from "segmenting" his operations by describing proximate activities in separate plans or RUE or pipeline ROW applications in order avoid modeling or applying controls.

The proposed rule would specify that a lessee or operator would be required to consolidate projected emissions from multiple facilities if: (1) The emissions from multiple facilities are generated by proximate activities (*i.e.,* the same well(s); a common oil, gas, or sulphur reservoir; the same or adjacent lease block(s); or, by facilities located within one nautical mile of one another); (2) the lessee or operator wholly or partially owns, controls or operates those facilities; (3) the construction, installation, drilling, operation, or decommissioning of any of the lessee or operator's facilities occurs within the same 12-month period as the construction, installation, operation, or decommissioning of another facility that meets conditions 1 and 2; and, (4) such a consolidation of emissions from multiple facilities would generate emissions sufficient to exceed an applicable emission exemption threshold. If two or more facilities meet all of these conditions, under the proposed rule, the lessee or operator would be required to calculate the sum of the projected emissions from those facilities (including its respective attributed emissions).

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[60] BOEM and the USEPA differ in their requirements for BACT, primarily due to the difference in their respective regulatory frameworks. BOEM reviews the BACT alternatives as part of its AQRP, under both the current regulation and the proposed rule prospectively, determining in advance of the facility installation what form of BACT is appropriate. The USEPA also evaluates BACT prospectively, but the CAA also specifies, among other requirements, that BACT cannot be less stringent than any applicable standard of performance under the New Source Performance Standards (NSPS) (42 U.S.C. 7479(3)). Therefore, although BOEM looks to USEPA practices when evaluating control technologies, due to the unique nature of the OCS, BOEM also exercises independent judgment on what constitutes BACT and how it should be applied.

[61] This topic is addressed in more detail in the book "Introduction to Atmospheric Chemistry," by Daniel J. Jacob, Princeton University Press, 1999, available at the following location: *http://acmg.seas.harvard.edu/people/faculty/djj/book/bookchap12.html.*

The proposed rule would specify that, if all of the emissions to be combined relate to the lessee's or operator's wholly-owned facilities, the lessee or operator would be required to provide the data and analysis regarding the complex total emissions. However, where the lessee or operator only partially owns the facilities whose projected emissions are to be consolidated, the lessee or operator would need to gather data from the operator of any facility that it does not wholly own[62] or which it does not operate and would need to provide to BOEM all the data and analysis it gathered. BOEM would make a determination that the lessee or operator has appropriately considered the relevant data in its analysis of the complex total emissions.

Under the proposed rule, if any lessee or operator is required to consolidate projected emissions data from multiple facilities, then anywhere a requirement applies to projected emissions, the lessee or operator would instead be required to use complex total emissions (except with respect to the process by which projected emissions are determined for any given facility, as specified in § 550.205(d)).

G. Ongoing Monitoring and Review of Projected Emissions

BOEM is proposing mandatory record keeping of fuel usage and activity data for all emissions sources, and we are proposing that non-exempt facilities subject to emissions reductions controls or mitigation and facilities that are exceptionally large be required to monitor their actual emissions. BOEM expects that most of the monitoring that would be required to be implemented in connection with the proposed rule would be of the type known as a Predictive Emissions Monitoring System (PEMS).[63]

PEMS is an air quality monitoring that provides continuous data recording and generates reports according to the applicable regulatory requirements. PEMS is used to meet 40 CFR part 60, appendix B, requirements for audit and performance standards on new stationary sources. It is also applied in many other contexts, including the PSD program (40 CFR 51.166 through 51.166), and the approval and promulgation of implementation plans (under 40 CFR 52.21). The USEPA generally regards PEMS as a secure and reliable means of collecting, storing, and reporting compliance data.

PEMS can be used on most combustion sources that fire gaseous or liquid fuels and for most compliance parameters such as NO_X, SO_2, CO, CO_2, O_2, hydrocarbons, NH_3, hydrogen sulfide, and formaldehyde. BOEM welcomes comments on the potential application of PEMS and/or the best approaches for selecting and evaluating monitoring systems.

1. Recordkeeping and Measurement Criteria

In order to ensure ongoing compliance with the NAAQS, the proposed regulations would authorize BOEM to collect additional information on activities or plans after they have been approved.

Under the current structure, BOEM approves all plans for facilities in advance of the construction and installation of such facilities on the OCS. With respect to air quality, the plans contain estimates of prospective pollutant emissions based on the information that is available about the most likely emissions for every emissions source that is proposed to be used. This process necessarily involves estimates because it utilizes emissions projections for equipment, much of which is not yet in use at the particular site. The same principle applies to proposed ERM. The ERM that are put into the plan are also prospective; the ERM would not be applied to the facilities, equipment or MSCs until after a plan has been approved. The effectiveness of any physical controls that have not yet been installed cannot be measured but only projected. Based on this approach, it would be difficult to determine what the actual emissions would be for one facility, on a stand-alone basis, let alone a range of support vessels, vehicles, aircraft and ancillary equipment. For this reason, namely, in order to provide greater confidence that the actual emissions levels are not exceeding the projected levels, BOEM has proposed a more reasonable approach to establish basic record-keeping and measurement criteria that could be applied after a plan has been implemented and the associated facilities are fully operational.

The proposed rule adds a requirement that all operators (1) keep fuel logs for all the relevant equipment and (2) maintain operating records (*e.g.*, operating times by level of capacity) for all key facilities, MSCs, and equipment described in the proposed plan. The information would need to be maintained on a month-by-month basis and would need to be provided to BOEM according a schedule determined by the respective BOEM region.

In addition to requiring all facilities to keep records as described above, certain facilities would also be required to measure actual emissions at specified intervals. The proposed rule outlines four criteria that would be used to determine which facilities would be subject to this requirement. First, the proposed rule would require the measurement of air pollutant emissions for plans which are approved subject to BACT. Such plans would have to demonstrate their actual emissions were not significantly above the projected emissions. Second, the proposed rule would require that any facility or emissions source that is not certified or compliant with USEPA emissions requirements applicable to engines or equipment intended or certified for use in the U.S. should also be required to demonstrate that its levels of actual emissions nevertheless are consistent with the estimates provided in the plan. Because the equipment is not certified, it is impossible to know without actual measurement the extent to which emissions are similar to emissions from certified equipment. Accordingly, BOEM believes that a demonstration should be made that the actual emissions of such equipment complies with the emissions levels which BOEM approved as part of the plan review.

Third, there are some situations where the accuracy and reliability of estimates of projected emissions, based on emissions factors, are unreliable or would be subject to a great range of variation. BOEM proposes to require measurement and reporting of actual emissions for plans in which the projected emissions cannot be reliably determined or in situations where the potential error in the emissions factors could result in a significant underestimate of the projected emissions (particularly in situations where the underestimate is of such a magnitude that not addressing the error could have a significant impact upon a State's air quality). This requirement is intended to allow BOEM to require monitoring on facilities with high emissions or a high level of variability in the accuracy of emissions factors or estimates. Because projected emissions are based on an activity rate and an emissions factor and because emissions factors are somewhat uncertain, the difference between the projected emissions and actual emissions will increase with higher activity rates. So, the range of potential projected emissions for larger facilities is much greater than those for smaller facilities, and the potential ramifications for errors are larger than for small facilities. Although this provision would likely be rarely invoked, it is important that BOEM can verify the actual emissions of large facilities in situations where it has evidence to believe that the actual emissions are under-reported.

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[62] All BOEM plan approvals and data are publically available and can be obtained from the BOEM Web site.

[63] For an overview of PEMS as well a general background discussion of other monitoring systems that may also be appropriate in certain contexts on the OCS, see citation to this Web site: *http://cfpub.epa.gov/oarweb/mkb/Basic_Information.cfm.*

Finally, in some areas, particularly those where the background concentrations of a pollutant are high or where the USEPA has recently changed a standard, and where there is a greater likelihood of a nearby facility causing or contributing to a violation of the NAAQS, monitoring of actual emissions may also be required. The modeling that was used to demonstrate that there is, presumptively, no such impact could only be valid if the assumptions regarding the actual background concentrations of pollutants are accurate. If a model of potential emissions were to rely on inaccurate background concentration estimates, its conclusions would also be suspect. For that reason, BOEM has proposed that these facilities in these areas may also be required to verify that their emissions correspond to those estimated in the plan.

H. Structure of the Proposed Rule

In contrast with the current BOEM regulations, where air quality data provisions are set forth in many sections, including §§ 550.215, 550.218, 550.224, 550.225, 550.245, 550.249, 550.257, 550.258, and 550.284, the proposed rule would establish one set of data requirements related to air quality in a new § 550.205. In the current regulations, plan requirements applicable to EPs are dealt with in one part of the regulations, and plan requirements applicable to DPPs and DOCDs are dealt with in another part of the regulations. Because the air quality requirements applicable to EPs, DPPs, and DOCDs are largely the same, BOEM proposes to place all the plan requirements relevant to air quality in one consolidated section.

The majority of the proposed rule consists of two major parts: A new section on data requirements and collection, § 550.205; and an air quality analysis control and compliance subpart, 30 CFR part 550 subpart C. The content of the two primary air quality data sections from the current regulations, § 550.218 and 550.249, would be covered by proposed § 550.205, and those existing sections would be eliminated.

The proposed rule would replace the current subpart C, which includes air quality evaluation and analysis and requirements for the application of emissions reductions measures. This new proposed subpart would describe the process for post-approval review of plans and for addressing compliance with future changes to the AAQSB on the part of the USEPA. BOEM is proposing to change the title of subpart C from "Pollution Prevention and Control" to "Air Quality Analysis, Control, and Compliance," to better reflect the scope and intent of this subpart.

To make the regulations more precise and to ensure they remain up-to-date, BOEM is proposing to add a number of new definitions and to clarify a number of existing definitions. The proposed rule would consolidate all the definitions and acronyms specific to air quality in a single section, replace or update various provisions, and clarify the regulations in those circumstances where the existing text could be considered unclear or potentially subject to more than one reasonable interpretation.

1. Potential Monitoring Alternatives

BOEM solicits comments on various alternatives that could be used to achieve the Bureau's objective of monitoring large emitters. The following are examples of alternatives that have been identified. In addition, there may also be other alternatives that should be considered.

One alternative would be for BOEM to require measurement of actual emissions on facilities with emissions above a specific threshold to be determined in the final rule. BOEM would like comments on what an appropriate threshold might be.

A second alternative would be for BOEM to establish general criteria that could be used to determine the potential error in the emissions estimates. Among the criteria being considered are: Production volume of the facility, size, type, and efficiency of engines proposed to be used, the age of equipment, the attainment or designated non-attainment status of the nearby areas within any State, the length of time the equipment will be operated, the proximity to other facilities, and/or the historic reliability and variability of emissions factors for the equipment being used. Under this alternative, BOEM would make a determination on a case-by-case basis whether any given facility would be required to report its actual emissions.

A third alternative would be to require actual emissions measures for any plan that proposes to use equipment with emissions factors that BOEM has determined to be particularly unreliable. Under this alternative BOEM would provide information to lessees and operations as to what specific types of equipment would be subject to this reporting requirement.

The fourth alternative would be to establish a monitoring and reporting formula whereby facilities whose projected emissions exceed a fixed percentage of the emission exemptions thresholds would be required to monitor and record their actual emissions. For example, BOEM could require that any facility with projected emissions for any CP that exceeds 85 percent of the threshold would have to report its actual emissions for all criteria and major precursor pollutants. This is due to the potential margin of error in the emissions factors. BOEM solicits comments on the appropriate percentage of the emissions exemptions thresholds for this reporting threshold. A fifth alternative would be any combination of the previous alternatives.

BOEM is also considering whether it should require measurement of actual emissions from activities in all plans, but limit the kinds of sources for which measurement is required, based on the uncertainty in the emissions factors estimates for specific pieces of equipment and the potential costs of measuring emissions from the associated equipment. The section-by-section description of proposed § 550.311 sets forth text for this proposal.

In addition to monitoring requirements, BOEM is also proposing provisions that clarify the way in which BOEM will ensure that previously approved plans comply with the statutory requirements. As noted previously, OCSLA requires "compliance with the national ambient air quality standards pursuant to the CAA (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under [OCSLA] significantly affect the air quality of any State" (43 U.S.C. 1334(a)(8)). BOEM believes this provision should properly be interpreted to mean that BOEM has a continuing obligation to ensure the protection of State air quality and that such obligation extends to ensuring compliance with the NAAQS, as they are amended to incorporate new and more accurate scientific information regarding the potential adverse public health and welfare impacts of air pollution.

Because the NAAQS are updated periodically to reflect improved information, BOEM believes that it would be appropriate to re-evaluate plans or RUE applications approved many years ago for compliance with section 5(a)(8) of OCSLA, even though the facility has not been modified in such a manner as to require the submission of a revised plan. For this reason, in addition to the new record-keeping and emissions measurement requirements, BOEM is also proposing that lessees and operators be subject to a requirement to resubmit their plans on a periodic basis for re-evaluation. The current practice, and one that would be continued under the proposed rule, is to project air emissions for ten years from the date of plan submission. Under the proposed rule, if a lessee or operator is operating under an approved plan, it would be required to resubmit a plan for a periodic air quality review ten years after BOEM's previous approval of the operator's last plan. This provision would be added in furtherance of the objective of section 5(a)(8) of OCSLA, which requires BOEM to ensure compliance with the NAAQS, and which makes no provision for any exceptions with respect to previously approved plans. All of the applicable requirements of this subpart in effect on the date of resubmission would apply on the same basis to a resubmitted plan as for an initial plan or RUE application. BOEM requests comments on this provision, particularly with respect to the potential impact on lessees and operators.

2. Plan Resubmittals

Once the new EETs have been established, BOEM would conduct periodic reviews of plans that were approved prior to that time. This is to ensure the lessee or operator's emissions remain compliant with OCLSA and are in accordance with the provisions of the OCS leases that require compliance with subsequent revisions to the regulations. Plans would be resubmitted according to the schedule in proposed § 550.310(c), no more frequently than ten years after they were approved. Plans that were revised or modified would also be due for resubmittal ten years after their most recent revision or modification was approved.

A plan resubmitted pursuant to this proposed provision would be required to be updated to comply with the requirements of § 550.205 as they exist at the time of the plan resubmission and to include the most current data on emissions factors. It would be reevaluated against the EETs and formulas as they exist at the time of the plan resubmission. The resubmitted plan must be modified to include any data collected on actual emissions since the last time the plan was submitted or resubmitted. Under the proposal, if a plan would indicate an exceedance of any applicable emission exemption threshold, all of the other applicable requirements of this subpart would apply as for an initial plan.

For plans that were approved prior to the effective date of this rule, the lessee or operator would be required to resubmit the air quality component of its previously approved plan after the date in which BOEM has determined new EETs and published them in the FR. The resubmission would be conducted on a phased basis, beginning in 2020. For further details, see the section-by-section analysis description of proposed § 550.310(c)(2).

I. Gulf-Wide Offshore Activities Data System (GOADS)

The proposed rule would include a new provision to support BOEM's effort to inventory emissions on the OCS. Currently, BOEM maintains this type of emissions inventory information on air pollutants in the GOM Region. BOEM collects the information through GOADS, as described most recently in BOEM NTL No. 2014–G01, and previous NTLs. The major pollutants for which BOEM has collected data in the GOADS include the following: CO, sulphur oxides (SO_x), NO_X, PM (including both PM_{10}, and $PM_{2.5}$), and volatile organic compounds (VOCs), including exempted compounds (40 CFR 51.100). BOEM also has collected information on GHGs, including CO_2, methane (CH_4), and N_2O through the GOADS.

The proposed rule would codify this current GOM practice, provide for the expansion of this activity to the North Slope Borough of the State of Alaska, and facilitate the gathering of information in other OCS areas to the extent necessary to augment the NEI or for another purpose such as to obtain relevant NEPA data. The proposed provision would require all lessees, operators, and holders of rights-of-use and easements (RUEs) to collect, maintain, and submit information on an ongoing basis regarding air pollutant emissions from all relevant emissions sources. BOEM would use this information to maintain a comprehensive OCS emissions inventory of air pollutants.

The information would assist BOEM in meeting its requirements under OCSLA to ensure the offshore activities it authorizes do not significantly affect the air quality of a State. Also, the information submitted under this provision would allow BOEM to determine OCS-wide emissions for leased areas and use that data to inform NEPA analysis and coordinate with the USEPA and coastal States to determine ambient air quality levels and mitigations of adverse impacts. The inventory will continue to augment BOEM's NEPA review by providing an accurate inventory to determine ambient concentrations of air pollutants and by serving as a basis to compute emission trends and to perform necessary air quality impact assessments. Separately, the data provided by lessees, operators, and RUE holders are analyzed and supplemented by BOEM, and the results are provided to the submitters in order to assist them in complying with their reporting obligations to the USEPA. Under the proposed rule, BOEM would continue to make this information available to OCS lessees, lease operators, and RUE holders to assist with their mandatory reporting of certain GHGs to the USEPA. See 40 CFR 98.233.

OCSLA requires DOI to make a decision on whether to approve an EP within 30 days and a DPP within 60 days. Consequently, the air quality review process for the plan is limited in its ability to provide extensive analysis of complex plans. Although not mentioned explicitly in OCSLA, BOEM's regulations require a similar review timeframe for DOCDs. While there is an opportunity for public comment on plans, there is limited opportunity for public review of air pollution measures in EPs, DPPs, or DOCDs. BOEM requests comments on how more opportunity for public input could be provided, while observing legal constraints on plan review timeframes.

J. Prevention of Significant Deterioration

The AAIs established by the USEPA represent ambient concentrations of CPs in attainment areas that have been established to prevent the significant deterioration of air quality. Increases in ambient concentrations of CPs that exceed the AAIs present a risk of causing an attainment area to become a non-attainment area. BOEM proposes to evaluate increases in ambient air concentrations to ensure compliance with the AAIs.

The preamble to the current regulation[64] stated that the maximum allowable increases (when added to the baseline concentration) "are ceilings which cannot be exceeded within an applicable area. To calculate the acceptable emission level, a lessee must combine the ambient air concentrations resulting from the projected emissions of total suspended particulates and SO_2 from the proposed OCS facility with those emissions of TSP and SO_2 from other onshore and offshore sources which contribute to the consumption of the maximum allowable increases." There is, however, no provision in the current BOEM regulations that explicitly requires accounting for "other onshore and offshore sources which contribute to the consumption of the maximum allowable increases."

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[64] 45 **Federal Register** (FR) 15133 (Mar. 7, 1980).

Accordingly, the proposed rule would contain an explicit requirement that facilities for which BACT is implemented consider other sources of emissions that contribute to consumption of the AAI when they compare the impacts of their controlled emissions against the AAIs.

Through this notice, BOEM is soliciting comments on alternative ways for how it might effectively ensure that the increments are not "consumed" in the relevant attainment areas or what steps it might take to protect the increments in an operational context without creating an undue burden on lessees or operators. One alternative for determining the extent to which the increments have been "consumed" would be to separately evaluate the cumulative effects of offshore development in the context of the NEPA analysis conducted for the Five-Year Oil and Gas Leasing Program or in connection with the lease sales. Another alternative might be to conduct periodic cumulative impact assessments of the air quality in relevant attainment areas. Based on either the NEPA analysis or a separate cumulative impact assessment, BOEM might maintain a database of relevant AAIs that have previously been "consumed." These data could be evaluated in the context of the plan review process, or separately in some other context.

V. Section-by-Section Analysis of the Proposed Rule

The following are the changes proposed by this rulemaking in part 550:

A. 30 CFR Part 550, Subpart A

Section 550.101—Applicability

The heading of § 550.101 would be revised from "Authority and Applicability" to read "Applicability." This change would make the section title better reflect the current content of the section.

Section 550.102—What does this part do?

The proposed rule would modify paragraph (a) of this section to make clarifying amendments. In addition, paragraph (b), which contains the table entitled "Where To Find Information For Conducting Operations," would be updated as follows with the following additions: The acronym for application of permit to drill (APD); a reference to the subsection on Development and Production Plans (DPP) to include Development Operations Coordination Documents (DOCD); the acronym for geological and geophysical (G&G) permits; the acronym from oil spill financial responsibility, (OSFR); a subsection to cover Rights-of-Use and Easement; acronyms for Rights-of-Use and Easement (RUE) and pipeline Rights-of-Way (ROW); and a new subsection referencing the Air Quality proposed regulations in subpart C.

Section 550.105—Revised Definitions

Note on Definitions

The definitions in § 550.105 are intended to apply to all of part 550. The definitions proposed to be added or revised in proposed § 550.302 are meant to apply only to § 550.205 of subpart B and all of subpart C.

In many cases, the definitions as used in part 550 differ from the meaning of the same term found in other agencies' regulations, in other contexts, or as used in common usage. Any word, phrase, or term that is not defined should be understood in the common and ordinary meaning of that word, phrase, or term. For example, the term nitrogen oxides is not defined, and it is not used in a manner that would require the term to be defined uniquely in this proposed rule, because BOEM uses it in its common and ordinary meaning. In contrast, the phrase "Best Available Control Technology," and its corresponding acronym BACT, is used as defined in proposed § 550.302, and it would not have the same meaning as used in the USEPA regulation.

Definitions related to air quality terms are currently located in three places in part 550: §§ 550.105, 550.200, and 550.302. Under the proposed rule, definitions of terms that are related solely to air quality would be located in § 550.302 as part of subpart C. Other definitions related to both air quality and other parts of the regulations are left in § 550.105. Subparts A and B contain some requirements related to air quality, and proposed sections within these subparts would use terms that would be defined in subpart C. Under this organizational framework, the proposed rule would move some of the definitions from one section to another and some terms would also be updated.

The proposed rule would revise or add definitions of the following terms:

Air Pollutant

This definition would be revised to include the following: (1) Any criteria air pollutant for which the USEPA has established numerical criteria, referred to as the primary or secondary National Ambient Air Quality Standards (NAAQS), in 40 CFR part 50 and as may be amended pursuant to section 109 of the CAA; (2) any major precursor air pollutant identified by the USEPA that contributes to the formation of a criteria air pollutant through an atmospheric or photochemical reaction, including, but not limited to, VOCs, NH_3, and those CPs that are also precursors for other CPs (such as SO_2); and (3) any USEPA-defined GHG, as defined at 40 CFR 98.6 and as may be amended pursuant to section 111 of the CAA; and, (4) any USEPA-defined Hazardous Air Pollutant, as defined at 40 CFR 63.2 and as may be amended pursuant to section 112 of the CAA. The purpose of this change is to clarify that, while there are many types of air pollutants, the focus of BOEM's regulatory efforts in this rulemaking is on the criteria and major precursor pollutants.

Emissions Source

The current regulations define the term "source" in section 550.302 as, "an emission point. Several sources may be included within a single facility." The proposed rule would replace the term "source" with "emissions source" and locate the newly defined term in section 550.105. The proposed rule would define "emissions source" as "a device or substance that emits air pollutant(s) in connection with any authorized activity described in your plan." The proposed definition would also clarify that several emissions sources may exist on a single facility, aircraft, vessel, or vehicle. The proposed rule would further make clear anything that: (1) Produces or results in the release of one or more air pollutant(s), including the flashing, flaring, or venting of natural gas; (2) involves burning any oil or well test fluids; or (3) generates fugitive emissions, is an emissions source.

BOEM is proposing to use the term "emissions source" in place of the current term, "source," since the term is used only in the air quality context (although referred to throughout part 550 of the regulations). The proposed definition of "emissions source" would be broader than the existing definition of "source." It would also clarify that an emissions source need not be part of a single facility. Examples of equipment that would fall under this proposed definition include, but not be limited to: Boilers/heaters/burners, diesel engines, drilling rigs, combustion flares, cold vents, glycol dehydrators, natural gas engines, natural gas turbines, pneumatic pumps, pressure/level controllers, amine units, tanks, dual fuel turbines, sources involved in mud degassing, storage tanks, well testing equipment, vessels (including support vessels, pipeline lay barges, pipeline bury barges, derrick barges), and any other equipment that could cause fugitive emissions, venting, losses from flashing, or loading losses.

Federal Land Manager (FLM)

The proposed rule would add this term to mean the Secretary of the Department with authority over any federal Class I area or sensitive Class II area (or the Secretary's designee). This definition is adapted from USEPA regulations at 40 CFR part 51, subpart P, implementing the CAA provisions on protecting visibility in Class I areas.

Federally-Recognized Indian Tribe

For the purpose of this proposed rule, a Federally-recognized Indian tribe refers to a Federally-recognized Indian tribe that has either a Treatment as State (TAS) status recognized by the USEPA or an approved Tribal Implementation Plan (TIP).

Flaring

Under the current § 550.105, "flaring" is defined as "the burning of natural gas as it is released into the atmosphere." The proposed rule would revise this definition to read, ". . . the burning of natural gas or other hydrocarbons and the release of the associated emissions into the atmosphere." The proposed definition would also provide that, because lessees and operators can use flaring to reduce the emissions of hydrocarbon vapors, it could potentially also be considered as an air pollutant emission reduction measure. The proposed definition would further make clear flares can be a mechanism used to control emissions from storage tanks, loading operations, glycol dehydration units, vent collection systems, and amine units. In addition, the proposed definition would note flares usually operate continuously but some are used only for process upsets, which occur during the exploration or development process when large amounts of flammable gases are released suddenly and unexpectedly. Finally, the proposed definition would provide the term "flaring" is equivalent to combustion flaring (*i.e.*, burning of the gases), but it is distinct from cold venting, which involves the discharge of raw pollutants into the air without burning.

BOEM is proposing to revise the definition of flaring and distinguish it from venting as a result of a response to Report 11–34 by the Government Accountability Office (GAO) in "FEDERAL OIL AND GAS LEASES: Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases."

Minerals

The proposed rule would revise the definition of the term "minerals" slightly to align with OCSLA section 2(q), 43 U.S.C. 1331(q). There would be no substantive changes to the definition for minerals, which continues to include oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals that are authorized to be produced from public lands.

Mobile Support Craft (MSC)

The proposed rule would add this term to the definitions section to mean "any offshore supply vessel (OSV) as defined by the USCG in accordance with 46 U.S.C. 2101, and any ship, tanker, tug or tow boat, pipeline barge, anchor handling vessel, facility installation vessel, refueling or ice management vessel, oil-spill response vessel, or any other offshore vessel, remotely operated vehicle (ROV), or any offshore vehicle used by, or in the support of, the offshore operations described in a plan."

Consistent with the approach currently used by BOEM, for the purpose of evaluating air emissions, an MSC is considered a facility while temporarily attached to the seabed or connected to another facility.

Offshore Supply Vessel

The term "offshore supply vessel" is defined in the USCG regulations. The term "support vessel" is used but not defined in the current BOEM regulations.[65] BOEM's regulations do specify, however, that the meaning of the term support vessel includes crew boats, supply boats, anchor handling vessels, tug boats, barges, ice management vessels, and other vessels, some of which do not qualify as offshore supply vessels under the USCG definition. Because of the potential confusion that could be caused by utilizing a term similar to that used by the USCG, BOEM proposes to revise its existing regulations and replace the term "support vessel" with a new term, "Mobile support craft," which would include offshore supply vessels as defined by the USCG, as well as any other vessel or vehicle used to support OCS exploration, development, production or transportation operations.

Offshore Vehicle

Current § 550.200 defines "offshore vehicle" as "a vehicle that is capable of being driven on ice." The proposed definition would clarify that an offshore vehicle is a type of MSC that is capable of being driven on ice and would add the phrase "and which provides support services or personnel to your facility or facilities."

Right-of-Use and Easement (RUE)

RUE is not currently defined in 30 CFR part 550. The proposed rule would define RUE to mean seabed use authorizations that BOEM may grant at an OCS site, other than an OCS lease, pursuant to sections §§ 550.160 through 550.166 of this part.

State

State is not currently defined in the regulations. The proposed rule would add this definition in order to clarify that the word "State" includes its submerged lands and extends to the federal/State boundary. Any reference to the word "State" in this proposed rule, unless otherwise specified, is intended to include the area offshore a State up to the federal/State boundary.

Venting

Venting is currently defined in 30 CFR 250.105. The proposed rule would modify that definition to read "the release of gas into the atmosphere, including though a stack without igniting it, whereby relief flows of natural gas or other hydrocarbons are directed to an unignited flare or which is otherwise discharged directly to the atmosphere. This includes gas that is released underwater and bubbles to the atmosphere."

Section 550.141—May I use or be required to use alternate documentation, procedures or equipment?

The proposed rule changes the title from "May I ever use alternate procedures or equipment?" and would add new paragraph (d) to existing § 550.141, stating, "In order to protect public health, you may be required or allowed to temporarily suspend the use of equipment that emits air pollutants, or to implement operational control(s) on the use of such equipment by the Regional Supervisor, when an adjacent

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[65] See 30 CFR 550.224 and 550.257.

State or locality declares an air quality episode or emergency, provided that any such suspension or operational control(s) would not cause an immediate threat to safety or the environment." The purpose of this provision is to ensure any BOEM-authorized equipment, which might contribute to air emissions episodes or air quality emergencies, could be turned off, or operated in a limited capacity, for the duration of such a declared emergency, as long as it can be done safely.

Local air quality authorities in States adjacent to the OCS periodically declare air emissions episodes or air quality emergencies when the concentration of a pollutant is especially high. BSEE and its predecessors have historically either required or allowed the suspension of use and testing of standby equipment during emergency health episodes declared by local authorities adjacent to the Pacific OCS (NTL 2000 P–01). Such suspensions have, for example, allowed Pacific OCS operators the ability to curtail stationary source emissions according to the measures contained in Episode Avoidance Plans or Emergency Action Plans, which the operators typically prepare at the request of either the USEPA or the State. The proposed provision would apply more generally to any equipment authorized under part 550 and that emits air pollutants. It would also apply anywhere on the OCS where operations could contribute to an air quality emergency.

A new provision has been added to accommodate situations in which published documents that are referred to in the regulations of this part have been updated by the original publisher. This provision would allow the use of the updated publications under certain circumstances, as specified in the proposed rule text.

Section 550.160—When will BOEM grant me a right-of-use and easement, and what requirements must I meet?

The proposed rule would redesignate current paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i), and (j) and add a new paragraph (f). The new paragraph would specify that facilities constructed or maintained on RUEs must meet the air quality requirements of § 550.205 of subpart B of this part and that subpart C would also apply to that RUE application. The rule clarifies that any reference to a lessee or operator in those sections would apply equally to any applicant for a right-of-use and easement.

The new provision of this section is intended to apply to those situations where an organization is proposing to install a new facility on a RUE and that facility is not included in an exploration or development plan. In the event that an existing RUE was approved as part of an exploration or production plan, no new requirements would be imposed. Similarly, any application for a new RUE that is included within the scope of a proposed exploration or development plan would not be affected by the requirements of this paragraph.

BOEM requests comments on the most appropriate method for establishing and reporting air quality requirements associated with the removal of any facility installed pursuant to a RUE in the context of the AQRP.

Section 550.187—What region-wide offshore air emissions data must I provide?

The proposed rule would add new § 550.187. The new section would require a lessee, an operator, or a holder of a RUE to collect, maintain, retain for a period of no less than 10 years, and submit to the appropriate regional office on an ongoing basis according to a schedule established by BOEM, information regarding all air pollutant emissions from all emissions sources associated with its operations. The primary means by which this requirement would be implemented is by requiring the lessees and operators to maintain records of the type and amount of fuel consumed (*i.e.,* fuel logs) by all relevant sources. BOEM would use this information to maintain a comprehensive OCS emissions inventory of air pollutants. Currently, BOEM maintains this type of emissions inventory information on air pollutants in the GOM Region with the GOADS. The proposed rule would replace the name "GOADS" with the name "OCS emissions inventory" because the proposed rule anticipates the data collection would not be limited to the GOM in the future.

The current BOEM practice is to require the submission of this information every three years, and BOEM intends to maintain this practice for the foreseeable future. The three-year timeframe is consistent with USEPA regulations regarding the timeframes for submitting this information. However, given that the USEPA may change its regulations and given that, in some cases, current USEPA regulations require more frequent reporting from some sources, the proposed regulations cross-reference USEPA regulations with respect to the timing of the information submittal. That way, the rule would propose to automatically reflect any changes made by the USEPA with respect to the NEI timing requirements. Accordingly, the proposed rule would specify that the reporting timeframes will be determined by the requirements of 40 CFR 51.30(a), as it may be amended.

The proposed rule would require that the submitted information include air emissions or the activity data necessary to calculate the emissions of stationary emissions sources, including all facilities, and all non-stationary sources, including MSC(s) and any other non-stationary emissions source(s) of air pollutants above the OCS or above State submerged lands that operate in support of an OCS facility, as determined by the Regional Supervisor. GOM has historically obtained the MSC data from independent sources and intends to continue this process for the foreseeable future. BOEM would likely only change this practice if the data collection became impractical.

Under the proposed rule, a lessee or operator may request that the owner of such non-stationary emissions source(s) provide the information to BOEM or a BOEM-designated agent, but the lessee or operator would still be responsible for submitting the required information if the owner does not submit it.

Currently, the GOM Region prepares its emissions inventory by allowing lessees and operators to directly input data either on fuel use or on equipment usage and operating time. BOEM then uses this data to calculate the resulting emissions. This proposed rule would allow for the continuation of that practice in the GOM Region, and the expansion of that practice to other OCS regions. Accordingly, the proposed rule requires the submission of (1) facility and equipment usage, including hours of operation at each percent of capacity for each emissions source; and/or (2) fuel logs containing monthly and annual fuel consumption data showing the quantity, type, and sulphur content of fuel used for each emissions source. The proposed rule would require the information provided under this proposed section should be at a sufficient level of detail so as to facilitate BOEM's compilation of a comprehensive OCS emissions inventory of air pollutants. BOEM solicits comments on various alternative methods for ensuring the accurate reporting of emissions and the appropriate methods that might be used to ensure the accuracy of the data and information it collects.

Consistent with the approach taken by the USEPA in the development of the NEI, the proposed rule specifies that lessees and operators would be required to classify the emissions according to the appropriate SCCs as defined by the USEPA in their Source Classification Codes listing, incorporated by reference in section 198(b)(1)(iv) of this chapter. The purpose of this requirement is to distinguish the various emissions processes including mobile source processes. The USEPA also estimates mobile source emissions of commercial marine vessels and without this distinction there would be a risk that either BOEM or the USEPA could double count the emissions that are reported.

Finally, the proposed rule would allow the Regional Director to waive or allow a delay in compliance with the requirements of this section on a region-wide basis. The reason for this waiver provision is to allow regions to avoid duplicating the effort already undertaken by the USEPA in this regard, particularly in areas where BOEM does not have air quality jurisdiction and does not, therefore, have any unique or separate data or IC requirements.

Under the proposed rule, a lessee, an operator, or a holder of a RUE would be required to submit the required information upon request or on an ongoing basis as determined by BOEM starting in 2017 or in the next reporting period if the rule is not effective by 2017 and continuing according to the timeframe established by the USEPA in its regulations governing the NEI to the appropriate regional OCS office. Leases and RUEs acquired after 2017 would be subject to the reporting requirement at the end of the next reporting period. The proposed rule would also require submission of this information more frequently if the lessee, operator, or holder of a RUE has an emissions source that generates facility emissions that have a PTE[66] such that it would qualify as a Type A source according to the USEPA's regulations in table 1 of appendix A of subpart A.—Emission Thresholds by Pollutant for Treatment as Point Source of 40 CFR 51.50. These regulations contain thresholds set by the USEPA to determine which emissions sources within States require annual reporting to States for the NEI that the USEPA conducts for other sources every three years.

As with the current GOADS in the GOM OCS region, the information obtained under this proposed provision is necessary to allow BOEM to determine more accurately air emissions from the activities it has authorized on the OCS and fulfill its statutory obligations under OCSLA section 5(a)(8). BOEM also uses that data to inform NEPA reviews and analysis and coordinate with the USEPA and coastal States. The inventory would provide data to augment BOEM's NEPA review by providing an accurate basis from which to compute emission trends and to perform necessary air quality impact assessments. In addition, the emissions data derived from information provided under this program would continue to be made available from BOEM to OCS lessees, operators, and RUE holders to assist with their mandatory reporting of GHGs to the USEPA. BOEM would also continue to use the inventory to meet information requests from the general public.

BOEM currently collects emissions data related to GHGs on a regular basis in the GOM OCS Region as part of the GOADS program. BOEM recognizes the impacts of GHG emissions on the air and water overlying the OCS, primarily associated with ocean acidification, and the States, in connection with climate change, and the importance and sensitivity of this issue. For this reason, BOEM is researching the implications of GHG emissions generated by OCS facilities and MSCs and evaluating various alternatives for potentially limiting these GHG emissions.

Section 550.198—Documents Incorporated by Reference

The proposed rule would incorporate by reference certain material into part 550 with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The proposed rule would provide for the process BOEM may use to amend its regulations to incorporate different versions of these documents.

For all material incorporated by reference, the applicable document would be the specific edition or specific edition and supplement or addendum cited in this section. Lessees and operators would be allowed to comply with a later edition of a specific document incorporated by reference, provided they show that complying with the later edition provides a degree of scientific or technical accuracy, environmental protection, or performance equal to or better than would be achieved by compliance with the listed edition; and they obtain the prior written approval for alternative compliance from the authorized BOEM official.

The proposed rule would explain that the effect of incorporation by reference of a document into the regulations in this part is that the incorporated document is a requirement. The proposed rule states that when a section in this part incorporates all of a document, the lessee or operator would be responsible for complying with the provisions of that entire document, except to the extent that the section which incorporates the document by reference provides otherwise. Further it states that when a section in this part incorporates part of a document, the lessee or operator would be responsible for complying with that part of the document as specified in that section.

BOEM may issue the a future rule(s) amending the documents incorporated by reference effective without opportunity for public comment when BOEM determines the revisions to a document represent new industry standard technology and do not impose undue costs on the affected parties; and BOEM meets the requirements for making a rule immediately effective under 5 U.S.C. 553.

The specific documents proposed to be incorporated by reference include: From the U.S. Environmental Protection Agency's Office of Air and Radiation, 1200 Pennsylvania Ave. NW., MS6101A, Washington, DC 20460.

(1) AP 42, Fifth Edition, Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources, January 1995, incorporated by reference at proposed § 550.205(b)(2). AP–42, Compilation of Air Pollutant Emission Factors, has been published since 1972 as the primary compilation of the USEPA's emission factor information. It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates. The Fifth Edition of AP–42 was published in January 1995. Since then the USEPA has published supplements and updates to the fifteen chapters available in Volume I, Stationary Point and Area Sources. The latest emissions factors are available on their Web site at: *https://www3.epa.gov/ttnchie1/ap42/*.

(2) Motor Vehicle Emission Simulator (MOVES), User Guide, Assessment and Standards Division, Office of Transportation and Air Quality, EPA–

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[66] The USEPA concept of PTE, which it defines at 40 CFR 51.301, is similar to the BOEM concept of facility emissions, in that both PTE and facility emissions refer to the maximum aggregate capacity of a stationary source to emit a pollutant under its physical and operational design. This concept includes all emissions sources attached to a facility but excludes the attributed emissions of non-stationary sources, such as MSCs. For further details on the concept and use of PTE in the USEPA context, see "Potential to Emit: A Guide for Small Business," USEPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–456/B–98–003, October 1998, available at: *http://www3.epa.gov/airtoxics/1998sbapptebroc.pdf*.

420–B–14–055, July 2014, incorporated by reference at proposed § 550.205(b)(2)(iii)(B). The USEPA's Motor Vehicle Emission Simulator (MOVES) is a state-of-the-science emission modeling system that estimates emissions for mobile sources at the national, county, and project level for criteria air pollutants, greenhouse gases, and air toxics. MOVES2014 is the latest version of MOVES. It incorporates significant improvements in calculating onroad and nonroad equipment emissions. MOVES201a does not significantly change the criteria pollutant emissions results of MOVES2014 and therefore is not considered a new model for SIP and transportation conformity purposes. The User Guide is available from the USEPA at: *https://www3.epa.gov/otaq/models/moves/documents/420b12001b.pdf.*

(3) User's Guide for the Final NONROAD2005, EPA420–R–05–013, December 2005. This publication is applicable to the NONROAD2008 model, incorporated by reference at proposed § 550.205(b)(2)(iii)(B). The NONROAD model is intended for estimation of air pollution inventories by professional mobile source modelers, such as state air quality officials and consultants. The User Guide is available from the USEPA at: *https://www3.epa.gov/otaq/models/nonrdmdl/nonrdmdl2005/420r05013.pdf.*

(4) FIRE (Factor Information Retrieval System) Version 5.0: Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants, Office of Air Quality Planning and Standards, Office of Air and Radiation, EPA 454/R–95–012, Research Triangle Park, NC 27711, August 1995, incorporated by reference at § 550.187(c)(4). This document provides emissions factors and Source Classification Codes (SCCs) from the USEPA's Factor Information Retrieval (FIRE) system, version 5.0, for use in the estimation, storage and retrieval of point source air pollutant emissions. Calculation of emission estimates is discussed as well as the SCC system of associating air pollution estimates with identifiable emitting process types or unit applications. This document is available from the USEPA at: *https://www3.epa.gov/ttn/chief/old/efdocs/454r95012.pdf.*

From the Federal Aviation Administration (FAA), Office of Environment and Energy (AEE–100), 800 Independence Avenue SW., Washington, DC 20591:

(1) Aviation Environmental Design Tool (AEDT) User's Guide, Version 2B, prepared for the FAA Office of Environment and Energy (AEE–100), Washington, DC prepared by U.S. Department of Transportation and Volpe National Transportation Systems Center, Cambridge, MA, July 2015 (as amended) incorporated by reference at § 550.205(b)(2)(iii)(D). AEDT is a software system that models aircraft performance in space and time to estimate fuel consumption, emissions, noise, and air quality consequences. AEDT is a comprehensive tool that provides information to FAA stakeholders on each of these specific environmental impacts. AEDT facilitates environmental review activities, such as those required under NEPA, by consolidating the modeling of these environmental impacts in a single tool. AEDT is designed to model individual studies ranging in scope from a single flight at an airport to scenarios at the regional, national, and global levels. AEDT leverages geographic information system (GIS) and relational database technology to achieve this scalability and offers rich opportunities for exploring and presenting results. Versions of AEDT are actively used by the U.S. government for domestic aviation system planning as well as domestic and international aviation environmental policy analysis. The User Guide is available from the FAA at: *https://aedt.faa.gov/Documents/UserGuide.pdf.*

(2) Aviation Environmental Design Tool (AEDT), Version 2B, AEDT Standard Input File (ASIF) Reference Guide, prepared for the FAA of Environment and Energy (AEE–100), Washington, DC prepared by U.S. Department of Transportation and Volpe National Transportation Systems Center, Cambridge, MA, May 2015 (as amended) incorporated by reference at § 550.205(b)(2)(iii)(D). This Reference Guide provides a description of the AEDT Standard Input File (ASIF) file format. It is intended for analysts and programmers who wish to create or modify an ASIF to import data into an AEDT study. The Reference Guide is available from the FAA at: *https://aedt.faa.gov/Documents/ASIFReferenceGuide.pdf.*

From the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom, or *http://www.imo.org*, or 44–(0)20–7735–7611:

(1) Revised MARPOL Annex VI, Regulations for the Prevention of Air Pollution from Ships, and NO_X Technical Code [NTC] 2008, 2009 edition, incorporated by reference at proposed section 550.205(b)(2)(v). This publication presents the revised MARPOL Annex VI, Regulations for the prevention of air pollution from ships, and the updated NO_X Technical Code 2008, including amendments adopted by resolutions MEPC.202(62), MEPC.203(62) and MEPC.217(63), as well as Guidelines and other information relevant to improved energy efficiency for ships and the prevention of air pollution. MARPOL Annex VI includes requirements for control of emissions from ships (chapter 3) and new regulations on energy efficiency for ships (chapter 4) that entered into force on 1 January 2013. These make mandatory the Energy Efficiency Design Index (EEDI) for new ships and the Ship Energy Efficiency Management Plan (SEEMP) for all ships. The publication is available from the International Maritime Organization (IMO) at: *http://www.imo.org/en/Publications/Documents/Newsletters%20and%20Mailers/Mailers/IB664E.pdf.*

This, and the other IMO publications, may also be ordered directly from the IMO at: *http://www.imo.org/en/Publications/Documents/Catalogue%20and%20Book%20Code%20Lists/English/Catalogue.pdf.*

(2) Revised MARPOL Annex VI, Regulations for the Prevention of Pollution from Ships ("2008 Annex VI"), incorporated by reference at proposed § 550.205(b)(2)(v). This adds various amendments to the annex of the protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships. It is available from a USEPA Web site at: *https://www3.epa.gov/nonroad/marine/ci/mepc58-23-annexes13-14.pdf.*

(3) NO_X Technical Code 2008, incorporated by reference at proposed § 550.205(b)(2)(v). This document amends the technical code on the control of emissions of nitrogen oxides from marine diesel engines. It is available from the IMO Web site at: *http://www.imo.org/en/OurWork/Environment/PollutionPrevention/AirPollution/Documents/Air%20pollution/Resolution%20MEPC.177(58)%20NOx%20Technical%20Code%202008.pdf.*

B. 30 CFR Part 550, Subpart B

The following are the changes proposed by this rulemaking in part 550:

Section 550.200—Definitions

Offshore Vehicle

The proposed rule would move the definition of this term into § 550.105 because it is used more often outside the air quality context and is referred to throughout the regulations in part 550.

Section 550.205—What air emissions information must be submitted with my plan (EP, DPP, DOCD, or application for a RUE, pipeline ROW, or lease term pipeline)?

In the current regulations, plan requirements related to air quality are widely dispersed. Air quality requirements are discussed throughout part 550, particularly in §§ 550.207, 550.212, 550.218, 550.224, 550.225, 550.227, 550.242, 550.249, 550.257, 550.258 and 550.261. In order to provide a consistent, comprehensive listing of all of the data requirements related to air quality, these existing air quality regulations would be consolidated in one new section, "§ 550.205 What air emissions information must be submitted with my plan (EP, DPP, DOCD, or an application for a RUE, pipeline ROW, or lease term pipeline)?" Most references to air quality requirements in the other sections of part 550 would be deleted and replaced with a cross-reference to the single new § 550.205. In addition, the proposed rule would specify that this section would apply to RUE, pipeline ROW, and lease term pipeline applications.

Paragraph 550.205(a)—Emissions Sources

The proposed rule would make clear that all lessees or operators must list and describe every emissions source on or associated with any facility or facilities and MSC(s) described in a plan. In contrast to the current regulations, the proposed rule describes in detail what should be considered an emissions source and what should or should not be included in that category. The proposed rule adds specificity to the requirements to ensure plans and RUE, pipeline ROW, and lease term pipeline applications are prepared consistently and evaluated according to a standard set of criteria. This would include each emissions source used during the construction, installation (including well protection structure installation), and operation of any exploration, testing, drilling (including well test flaring), development, or production equipment or facility or facilities (including every platform or manmade island included in their plan). The proposed rule would specify lessees or operators must account for the air pollutant emissions sources associated with all drilling operations, including workovers and recompletions, sidetracking, and pipeline construction, and reported emissions sources must include those associated with any oil or gas produced on a lease that is used during the course of lease operations (*i.e.,* any beneficial use of produced oil or gas). The proposed rule would require the list of emissions sources to cover the duration of the proposed plan's activities.

The proposed rule would require lessees or operators to specify the equipment type and number, manufacturer, make and model, location, purpose (*i.e.,* the intended function of the equipment and how it would be used in connection with the proposed activities covered by the plan) and physical characteristics of each emissions source. It would also require reporting of the type and sulphur content of fuel stored and/or used to power each emissions source and the frequency and duration of the proposed use.

The proposed rule would contain additional provisions for engines on facilities and MSCs. For all engines on each facility, including non-road engines, marine propulsion engines (in the case of MODUs when attached to the seabed), or marine auxiliary engines (*i.e.,* a nonroad or highway engine on a vessel that is used to power a crane, a drill, or an auxiliary power unit, but it is not installed on a marine vessel, as defined at 40 CFR 1042.901), the lessee or operator would be required to identify and provide the engine manufacturer, engine type, fuel type, engine identification, and maximum rated capacity of the engine, to be expressed in kilowatts (kW), if available. If a lessee or operator has not yet determined what specific engine would be used, it would be allowed to provide analogous data for a comparable engine with the greatest maximum rated capacity for the type of engine that it will use. For this purpose, BOEM would consider a comparable engine to be one having similar operational and emissions characteristics and similar operational and physical limitations. Under the proposal, if the engine for which the lessee or operator provides documentation has physical design and operational limitations and these limitations are the basis of its emissions calculations, then the lessee or operator must provide documentation of such limitations.

For engines on MSCs, including marine propulsion and marine auxiliary engines, the proposed rule would require lessees or operators provide information regarding the engine displacement in liters/cylinder, and maximum speed in revolutions per minute (rpm). If the specific rpm information is not available, the proposed rule would require the lessee or operator to indicate whether the rpm would be less than 130 rpm, equal to or greater than 130 rpm but less than 2,000 rpm, or equal to or greater than 2,000 rpm, based on best available information.

For offshore vehicles and MSCs, the proposed section would provide that when a lessee or operator does not know which specific engines will be used or the information about them cannot be verified, it may estimate maximum potential emissions based on the maximum potential emissions of the type of MSC typically used in the planned operations.

Finally, for any emissions source that does not fall into one of these categories, the proposed rule would require lessees or operators to provide all information needed to calculate and verify the associated emissions, such as volumes vented, volumes flared, size of tank, number of components, etc.

Paragraph 550.205(b)—Emissions Factors

The purpose of this section is to provide information regarding how a lessee or operator would determine the level of air emissions for each emissions source described in its plan. The proposed rule would provide a considerable amount of detail regarding what emissions factors should be used. Emissions factors are the values that allow lessees or operators to calculate how much of a pollutant will be emitted based on the operation of the source. The proposed rule would retain the current requirement that, for each emissions source, for every criteria and major precursor air pollutant, the lessee or operator must identify the most appropriate emissions factor(s) for calculating its projected emissions. The proposed rule would specify the acceptable methods to be used for determining the appropriate emissions factors. In general, a lessee or operator would be allowed to use actual emissions amounts derived from emission testing done for a specific emissions source in lieu of one of the approaches to estimate emission factors set out below. When determining the emissions factors through testing, the lessee or operator must consider test points and fuel. In general, unless the unique circumstances of the proposed plan make it clearly impractical to do so, test points should be devised based on actual operations as opposed to using the test points and engine loads contained in one of the various marine or non-road duty cycles. It cannot be assumed that emissions per hour or emissions per kW or per hp hour from large main engines on drill ships and platforms are highest during full load or near-full load operation. Large main engines on drill ships and platforms typically operate at less than half full power, and emissions factors for some pollutants during this operation may be significantly higher than at full load or near-full load. Specifically, actual maximum emissions per hour or emissions per kW or horse-power hour may not be properly estimated by assuming 90% load, since emissions factors for different pollutants can have different variation with load. Under the proposed rule, the emissions factor and emission per hour or emissions per kW or per horse-power hour for the operation that is actually expected should be determined, and the emissions under 90% load should be used only if emissions at this load are the highest and thus conservative.

The proposed rule would further specify that the lessee or operator must ensure that the fuel used in the testing to generate the emission factors reflect the type of fuel that will be used by the engine in actual operation. The sulphur content is especially important with respect to measuring PM and SO_X emissions.

The proposed rule would specify that in the event that the lessee or operator were to elect not to measure the actual emissions for any given emissions source, it would need to select an emissions factor from the list of sources provided in the proposed rule. These are described below, in the order of preference.

First, the proposed rule would provide that the lessee or operator use the emissions factor(s) that are vendor-guaranteed or provided by the manufacturer of the specific emissions source, if available. If the lessee or operator were to use vendor-guaranteed or manufacturer data, it would need to demonstrate (1) that the fuel used by the manufacturer to generate the emission factors reflects the type of fuel that will be used by the engine in actual operation and (2) that the actual engine has not been modified outside the configuration used to generate the emission factors; thus, the emission factors used in the plan must represent the actual pattern of use for that equipment in operations. The proposed rule would specify that where a manufacturer has not provided an emissions factor for the emissions source the lessee or operator proposes to use, the lessee or operator may use a manufacturer's emissions factor for a similar source only if the lessee or operator could demonstrate to the satisfaction of the Regional Supervisor that the emissions generated by the lessee or operator's emissions source are the same as or lower than that for which a manufacturer's emissions factor is available.

Second, the proposed rule would state that emissions factors generated from source tests required by USEPA Outer Continental Shelf permits would be allowed as BOEM emission estimates for a specific rig since these emissions factors are based on prior emissions tests. These emissions tests are required across the range of actual load operations for engines on Mobile Offshore Drilling Units (MODU). The proposed rule would further specify that if emissions factors were not generated through testing for a particular engine, emissions factors generated from a recent and similar permitted engine may be used.[67] Data from a rig from the same manufacturer, having an engine of the same model and year would generally be allowed, unless the Regional Supervisor has a reason to believe that such data may not be accurate or reliable.

Third, if emission factors, based on models or an emission model guidance document developed by the USEPA or FAA is available and appropriate to the emissions source, the lessee or operator may use the relevant emission factors from that model or guidance document. The proposed rule would provide a list of emission models that may be used to obtain emission factors for certain types of emissions sources. In particular, two referenced documents from the USEPA provide in-use emission factors for a variety of engines including "Category 3" main propulsion engines on vessels and engines used in equipment on vessels, covering both engines certified to USEPA emission standards and engines certified by other nations and international organizations.

Fourth, the lessee or operator would use emission factors from published studies conducted by a reputable source, such as the South Coast Air Quality Management District, California Air Resources Board, a university, or research agency, to the extent they may yield reliable emission factors or formula to calculate emissions factors for certain types of engines and equipment other than for the large main engines on drilling ships and drill platforms and for locomotive-sized engines powering cranes. These studies may be helpful to generate emission factors for marine coating operations, flares, emissions from drilling muds, etc. If an emission study is used, the study must cover representative engines, fuels, and duty cycles.

Fifth, in certain situations, the MARPOL Annex VI engine emission standards may be used as proxies for emission factors. This option would be available only for an engine installed on a non-U.S. flagged vessel that is not part of an engine family that is covered by a USEPA certificate of conformity but that is MARPOL certified. In this case, the lessee or operator must indicate the vessel flag as well as engine size used to determine the standards to use as the proxy emission factor for that engine. If this approach is used, the plan would also be required to account for any differences in fuel sulphur limits.[68] If all fuel used by the subject drilling ships and offshore platforms is purchased in the U.S., the CAA fuel requirements would apply.

BOEM seeks comment on: (1) Whether this fifth alternative would be appropriate or is needed, particularly given that the emission factors used in USEPA's marine and nonroad emission models apply regardless of flag (*i.e.*, emissions from similar engines in similar use regardless of whether the engine is on a US or a foreign-flag vessel); (2) how such an approach would be applied to engines that use Heavy Fuel Oil, since the NO_X Technical Code (NTC) allows engines to be certified on diesel fuel (which can have relatively high sulfur content); and, (3) what approach could be taken to estimate pollutants other than NO_X (since there are no MARPOL standards for the majority of criteria and precursor pollutants) and, if using one of the other approaches is preferred, whether the NO_X emission factors from those other approaches should be used and this fifth alternative be not adopted.

Sixth, under the proposed rule, if none of the methods provided in the first five options above are applicable, for a natural gas-powered engine of any rated capacity, or for a non-road diesel-powered engine with a maximum rated capacity less than 900 kW, or for a non-engine emissions source, the lessee or operator could use the appropriate emissions factor from the USEPA AP 42, Fifth Edition, Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Emissions sources, or any update thereto, as incorporated by reference at § 550.198(b)(1)(i).

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[67] *I.e.*, the same make, model and year engine would be required.

[68] Under Annex VI, the NO_X engine type certification is separate and not related to the fuel sulphur limits. The technical code for certifying Annex VI Regulation 13 engines requires "suitable" testing fuel be used and that the characteristics of the testing fuel be noted for the certification. Vessels operating in North American/Caribbean Emissions Control Area (ECA) are all required to use 0.1% sulfur fuel, regardless of the flag of the vessel and regardless of where the fuel was purchased. Vessels may also achieve compliance within the ECA by receiving an Annex VI Regulation 3 trial permit or Regulation 4 equivalency determination, in lieu of using the 0.1% sulphur fuel. If the MSC operations associated with the facility are all within the ECA and the Annex VI Reg13 engine was tested using 0.1% sulfur fuel, there would be no differences in fuel sulphur limits to account for. However, it is recognized that the ECA is smaller than the OCS area impacted by this regulation so vessels may not be using 0.1% sulfur fuel, and that the Annex Regulation 13 engine may have been certified using a fuel different from the fuel used during operations.

Seventh, if none of the above options are applicable,[69] the lessee or operator would be required to conduct stack testing on the emissions source to determine the appropriate emissions factor. The data from stack testing could be used only for the engine for which the stack testing was conducted.

If a lessee or operator elects to apply an emissions factor based on a standard, as allowed under the 5th and 6th alternatives, it must take appropriate account of the deterioration in performance based on the age of the equipment and the potential variation of the actual emissions from the standard to account for the maximum potential emissions that the emissions source may emit. Given that equipment tends to operate less efficiently over time, the lessee or operator should make an appropriate upward adjustment in the emissions estimates for older equipment (*e.g.,* to reflect emission deterioration over time). BOEM solicits comments and suggestions on how this might most appropriately be conducted and the extent to which there are appropriate, documented, methodologies for making these kinds of adjustments.

The proposed rule would also require that any time a lessee or operator revises a plan, including as a part of its resubmissions every ten years, it must consider the age of the equipment, adjust for any change in operating efficiency, and provide the associated emissions factors in its revised or resubmitted plan, as applicable. Also, under the proposed rule the Regional Supervisor may require a lessee or operator to use a different emissions factor for any emissions source or air pollutant if the Regional Supervisor has reason to believe the selected emissions factor is inaccurate to a material degree or new information on emissions factors becomes available. The proposed rule would also provide the Regional Supervisor may require stack testing or another form of validation to verify the accuracy of an emissions factor.

Various U.S. manufacturers of non-road and marine diesel engines produce both domestic and export-only versions of each piece of equipment. The domestic version is manufactured to comply with USEPA emissions requirements whereas the export-only version may or may not comply with USEPA requirements. Domestic versions may, in some cases, be exported. Manufacturers in other countries also produce, or may in the future produce, both engines that are certified by the USEPA as legal for sale in the U.S. and engines that are not. The USEPA provides emissions factors for such equipment that is certified to be legal for use in the U.S., and these emission factors apply to an originally-configured U.S.-certified engine regardless of its marketing path. It does not test or evaluate the emissions of U.S.-manufactured equipment intended only for export or foreign-manufactured equipment not intended for sale in the U.S. For this reason, under the proposed rule, if a lessee or operator proposes to utilize an engine or equipment that is manufactured in the U.S. or any other country, but which is not certified by the USEPA for use in the U.S., the lessee or operator may not use a USEPA emissions factor intended to apply to the domestic version of such engine or equipment of the same vintage. Under the proposed rule, if a lessee or operator proposes to utilize an engine or equipment on a U.S.-flagged vessel that is not USEPA-certified for use in the U.S., then that lessee or operator must test the actual emissions of the proposed engine or equipment and submit data on its actual emissions. If the lessee or operator claims to use a USEPA certified engine or equipment, it must submit documentation of that engine or equipment's certification.

Under the proposed rule, if a lessee or operator's projected emissions include emissions for a U.S. flagged vessel, then it must submit documentation of the USEPA-issued Certificate of Conformity for each mobile source engine.[70] For MARPOL-compliant foreign-flag equipment for which no other emissions factor data are available, MARPOL emissions standards may be used to determine proxy emission factors where such emissions standards are available (see 5th option, above).[71] However, if this source is used, the plan must account for any differences in the fuel sulphur limits applicable to the fuel being used for operations and the sulphur limit of the fuel used for emission testing. All fuel used by the subject drilling ships and offshore platforms would be required to either be purchased in the U.S. or comply with applicable CAA fuel emissions requirements, unless the lessee or operator could demonstrate that it has properly accounted for any differences in emissions that may result from the use of non-U.S. fuel. If a lessee or operator proposes to use any engine or equipment that is neither USEPA-certified nor MARPOL-compliant, then it may not use an emissions factor intended to apply to a MARPOL compliant engine or equipment. In that case, the lessee or operator would be generally required to provide actual emissions test results for the engine.

Paragraph 550.205(c)—Facility Emissions

This paragraph is intended to provide a consistent set of criteria to determine what should be included in each plan with respect to facilities and their corresponding emissions.

This paragraph would require facility emissions to be reported for each criteria and major precursor air pollutant in three separate ways. First, paragraph (c)(1) would require the lessee or operator to calculate and report the projected annual emissions for each facility in its plan, itemized by all of the emissions of each emissions source on or physically connected to each facility. Such calculations should be done for each year that the plan is proposed to engage in operating activities, for a period of ten years. Emissions reported under this subparagraph would include those associated with any emissions source involved in the construction, installation, operation, or decommissioning of the facility, based on the maximum rated capacity of each emission source associated with the facility and using the methods and procedures specified under paragraphs (a) and (b) of this section. Second, paragraph (c)(2), would require the lessee or operator to calculate and report the maximum 12-month rolling sum[72] of emissions from each emissions source on or connected to each facility and the maximum 12-month rolling sum of the emissions from each facility. The purpose of this latter requirement is to identify the peak emissions that would be expected to occur during any 12-month period within the duration of the plan. Third, in paragraph (c)(3), the proposed rule would require lessees or operators calculate the maximum projected peak hourly emissions from each emissions source on or physically connected to each facility and the maximum projected peak hourly emissions from each facility that would result from the construction, installation, operation, or decommissioning of the facility.

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[69] This option is not required as the first alternative because stack testing is generally very expensive and limits the flexibility of operators in preparing their plan(s) (because stack testing is engine-specific).

[70] The USEPA requires that all U.S.-flagged vessels must have engines certified by the USEPA.

[71] MARPOL emission standards and certification requirements for Category 3 propulsion engines are similar to those of the USEPA, and USEPA emission factors appropriately matched to the vintage and type of engine may be used for such engines.

[72] The plan must include the emissions for the 12 consecutive month period in which the emissions are projected to be the greatest, regardless of the calendar year in which those months occur. All references to 12-month rolling sum are intended to refer to 12 consecutive month intervals without any overlap.

The proposed rule would specify the lessee or operator must calculate its projected emissions from each emission source, based on the maximum rated capacity of each engine it proposes to use, or the capacity that generates the highest rate of emissions. Emissions information would be required for emissions sources individually and for the entire facility or facilities. BOEM expects it would implement this proposed requirement by continuing its current practice whereby lessees and operators provide information on their emissions in a table that they submit with their plan.

BOEM intends this requirement to be broad, and accordingly, the proposed rule also defines "emissions sources" and "facilities" broadly. (See discussion of definitions of those terms at §§ 550.105 and 550.302). The requirement to report facility emissions exists in the current regulations, but the proposed rule would refine the requirement. The result of these broad definitions in the context of this proposed section would be that all sources of emissions connected to a facility should be accounted for in a plan. Examples of emissions sources on platforms that a lessee or operator would be required to report under this proposed section include, but are not limited to, boilers/heaters/burners, diesel engines, drilling rigs attached to the seabed, combustion flares, cold vents, fugitives, glycol dehydrators, losses from flashing, natural gas engines, natural gas turbines, pneumatic pumps, pressure/level controllers, amine units, loading losses, tanks, dual fuel turbines, and sources involved in mud degassing or storage tanks. Examples of sources that would also be accounted for under this proposed section that normally are not on a platform include, but are not limited to, drilling rigs, and any other equipment that is temporarily or permanently connected to any planned facility. This would include any support vessel (crew, supply, tugs), pipeline lay barges, pipeline bury barges, derrick barges (installation of structure), and well testing equipment, while connected or moored to the facility.

The USEPA concept of PTE, which it defines at 40 CFR 51.301, is similar to the BOEM concept of facility emissions, in that both PTE and facility emissions refer to the maximum aggregate capacity of a stationary source to emit a pollutant under its physical and operational design. In both cases, this concept includes all emissions sources attached to a facility but excludes the attributed emissions of unattached non-stationary sources.[73] For further details on the concept and use of PTE in the USEPA context, see "Potential to Emit: A Guide for Small Business," USEPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–456/B–98–003, October 1998, available at: *http://www3.epa.gov/airtoxics/1998sbapptebroc.pdf.*

BOEM is considering whether to use the term PTE instead of facility emissions, and BOEM invites comment on this question.

Paragraph 550.205(d)—Attributed Emissions (*i.e.,* Non-Facility Emissions)

Proposed § 550.205(d) specifies how emissions from MSCs described in a plan would be attributed to a facility described in that plan. The proposed section provides the procedures by which operators would account for emissions from these MSCs while they are supporting the operations in the plan. Under the proposed rule, lessees and operators would be required to calculate both the total emissions that every MSC in its plan generates and then to calculate the portion of that total that should be attributed to their facility.

First, for each facility described in a plan, a lessee or operator would be required to identify the MSCs that would be used to support that facility. The lessee or operator, to the extent practicable, would also be required to identify the other facilities each MSC would support.

Second, for each such MSC, the lessee or operator would calculate its emissions per trip, from when the MSC leaves its home port until it returns (*i.e.,* support emissions per trip), irrespective of what other facilities the MSC may also service. The lessee or operator would be required to base such calculations on the maximum rated capacity or the capacity that generates the highest rate of emissions for each emissions source on the MSC. Having done this, the lessee or operator would multiply this result by the number of trips the MSC would take in support of the facility during the 12 consecutive-month rolling maximum period over which the corresponding facility emissions would be measured. In addition, each lessee or operator would also have to determine and report the maximum projected peak hourly emission for each MSC. If an MSC does not support any other facilities, the proposed rule would require the lessee or operator to attribute all of these emissions to the facility the MSC supports. However, if an MSC supports multiple facilities, the proposed rule would then provide three alternative methods for calculating the portion of total MSC emissions that lessees and operators would be required to attribute to their facility. First, a lessee or operator could, to the extent practicable, calculate and report the difference between the total support emissions and the emissions it can document should be reasonably allocated to another facility. This option would be available to lessees or operators who know detailed information about the routes of the MSCs in their plans and what other facilities each MSC would support. Second, if the first method is impracticable but the lessee or operator knows the number of facilities supported by any given MSC (but not their locations or the routes of the MSC), the operator could divide the total support emissions by the lowest number of the facilities the operator reasonably determines the MSC will serve on a typical trip, including the facilities described in its plan. If neither of these two methods is practicable, the rule would allow operators to calculate and report the greater of either (1) the emissions that would be generated by the MSC traveling round trip between its port or home base and the facility, or (2) the emissions from the MSC operating within 25 statute miles of the facility. Finally, the proposed rule would allow lessees or operators the ability to elect to attribute the total support emissions of any vessel or vehicle to their facility if they decide not to allocate the emissions among facilities.

The proposed rule includes the options described above because a lessee or operator may not know, at the time of plan submittal, which facilities an MSC will support. The intent is to provide these alternatives for allocating support vessel emissions in situations where it would otherwise be impracticable to do so. The options in the proposed rule are intended to account for the variety of practices that could occur on the OCS and the ability to know the particular operation of an MSC at the time of plan submittal.

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[73] However, as defined by BOEM, a non-stationary source, such as a vessel, vehicle or aircraft could also have a potential to emit.

With respect to proposed § 550.205(d)(7), although that requirement is only one of the assumptions that are to be used in calculating the MSC emissions, the provision is intended to clarify it would not be appropriate to calculate the emissions only for one source, in the event an MSC had multiple sources of relevant emissions. The rule is intended to clarify the maximum rated capacity requirement applies to each source on every MSC, in any situation where an MSC has multiple emissions sources.

Further, the proposed rule would provide that if BOEM questions the lessee or operator's determination of the attributed emissions, the Regional Supervisor may require additional documentation to support their findings and may direct them to make changes, as appropriate.

Finally, just as BOEM is considering using the term PTE in place of the term facility emissions, BOEM is also considering using USEPA's term secondary emissions (as defined in 40 CFR 51.301) in place of attributed emissions. BOEM welcomes comment on this question.

Paragraph 550.205(e)—Projected Emissions (*i.e.*, Combined Facility and Attributed Emissions)

This paragraph is intended to provide a detailed, consistent set of criteria to determine what should be included in each plan with respect to projected emissions of facilities and MSCs.

Proposed § 550.205(e) would require a lessee or operator to calculate the maximum 12 month rolling sum of projected emissions of each criteria and major precursor air pollutant for each of its facilities. This would represent the sum of the facility emissions for the 12-month rolling maximum period reported under (c)(2) of this section and attributed emissions reported under (d)(6) of this section for the same period. Pursuant to the criteria set forth in proposed § 550.303(d), the lessee or operator would also be required to determine whether the projected air emissions from each facility would need to be consolidated with those of other facilities.

If any of a lessee's or operator's proposed facilities would be located in such a manner (as defined in § 505.303) as to potentially constitute proximate activities with a pre-existing facility, or a facility that was previously approved but not yet constructed, the proposed rule would require any such facility to be identified in the plan. If the lessee or operator would be required to consolidate emissions from multiple facilities, then it would need to provide projected emissions information for each facility as well as the complex total emissions for all of consolidated activities.

In addition, the proposed rule would also require every lessee or operator to calculate and report the projected annual emissions for its facilities for each year in which it intends to operate, as well as the maximum peak hourly emissions for each facility and the corresponding attributed emissions.

Paragraph 550.205(f)—Emission Reduction Measures (ERM)

The purpose of this paragraph is to describe in general terms the information that must be included in a plan regarding the types and purpose of various emission reduction measures that are proposed in a plan and what reductions the lessee or operator expects to achieve from these proposed measures.

Under the proposed rule, a lessee or operator may elect to propose ERM in its plan to ensure that its projected emissions are under the EETs described in proposed § 550.303. Whether an operator elects to propose ERM or whether the proposed rule would require it, this section would require that such proposed measures be reported in the plan. This element of the proposed rule is consistent with current GOM Region practice. It would specify that the lessee or operator must provide a description of all proposed ERM, including the affected emissions source(s); the emissions reduction control technologies, procedures, and/or operational limits; the emission control efficiencies; the projected quantity of reductions to be achieved; and, any monitoring or monitoring system the submitter proposes to use to measure or evaluate the associated emissions. The rule would further clarify the lessee or operator must be able to demonstrate that all of the ERM described in the plan meet the applicable substantive requirements in proposed § 550.309.

BOEM expects lessees or operators are likely to consider operational controls to reduce emissions for many sources, for example limiting the hours of operation, reducing engine power, etc., in order to bring their projected emissions within the EETs. This proposed section would require the application of such operational controls to be documented in the plan, which would require review by the Regional Supervisor, and approval only when the ERMs are demonstrated to maintain and not compromise the safety of operations. Other sections of the proposed rule, such as proposed §§ 550.309 and 550.311, would subject each proposed emission reduction measure to monitoring, reporting, and verification.

Geological sequestration of pollutants under the seabed is another potential emission reduction measure that has not yet been considered. BOEM would welcome feedback on the extent to which stakeholders consider this to be a potentially viable and effective control mechanism, either in conjunction with or as an alternative to other measures.

Paragraph 550.205(g)—Modeling Information

This paragraph is intended to provide a detailed, consistent set of information and criteria to determine what should be included in each plan submitted to BOEM with respect to the proposed modeling of air emissions associated with a plan's projected operations.

If a lessee or operator conducts modeling in support of its plan, then the proposed rule would require the lessee or operator to provide: A table(s) of the appropriate and relevant maximum projected air pollutant concentrations over any area(s) of any State(s) and Class I area(s) including the most affected attainment area(s) and the most affected non-attainment area(s), as applicable; the maximum projected concentrations resulting from the projected emissions for each of the facilities, by criteria air pollutant and major precursor air pollutant, for the corresponding averaging time(s) (*e.g.*, 1-hour, 3-hour, 8-hour, 24-hour, annual, etc.) specified in the tables in 40 CFR 51.165(b)(2), 40 CFR 52.21(c), and 40 CFR part 50; a list of the inputs, assumptions and default values used for modeling, including the source and justification for meteorological information; the name and version of the model(s) used; a modeling report, including the modeling results (unless already provided and the projected emissions are the same or lower); and, for each MSC, the distance from the facility or facilities in the plan to the relevant home port or base. All of this information is necessary so BOEM can properly evaluate and validate the results of the modeling.

Under the proposed rule, if a lessee or operator would be required to model projected emissions, and the lessee or operator has previously submitted a modeling report and/or modeling results to the Regional Supervisor, then the lessee or operator may provide a reference to such report and/or results, rather than resubmit a modeling report and/or modeling results, provided the projected emissions are the same or lower than in the previously submitted report(s) or results.

Paragraph 550.205(h)—Requirements Applicable to Specific Air Pollutants

550.205(h)(1)—Nitrogen and Sulphur Oxides (NO_X and SO_X)

Because the intent of the proposed rule is to evaluate the maximum potential effect that could occur with respect to the implementation of any given plan, the proposed rule would clarify a lessee or operator must utilize data for NO_X and SO_X whenever possible or reasonable estimates thereof. Projected emissions of NO_X would need to include emissions of nitrogen oxide and NO_2, as well as any other oxides of nitrogen for which data are available. Similarly, any projected emissions of SO_X would need to be reported, including but not limited to the emissions of SO_2. Only in the event that data on the broader emissions of NO_X or SO_X are not available, would the proposed rule specify a lessee or operator could utilize data on the sum of nitrogen oxide and NO_2 emissions as a substitute for NO_X and data on SO_2 emissions as a substitute for SO_X.

550.205(h)(2)—PM_{10} and $PM_{2.5}$

Because the USEPA has replaced "total suspended particulates" with two separate kinds of pollutants, a lessee or operator would be required to provide data and information on both PM_{10} and $PM_{2.5}$, whenever such information is available for any given emissions source, and to evaluate each separately under every applicable standard in all cases where it is possible to do so. This should not present an issue, since the split in the PM classification has existed for quite a few years. Only in the rare event that available data for PM are not separately reported for both PM_{10} and $PM_{2.5}$ for any given emissions source, would the proposed rule require lessees and operators to perform their analysis of $PM_{2.5}$ emissions utilizing PM_{10} data for the emissions threshold analysis and for modeling purposes.

However, the proposed rule specifies a lessee or operator must separately identify all $PM_{2.5}$ and PM_{10} emissions in its plan and a plan that fails to contain separate emission exemption threshold and modeling data for each pollutant will not be considered complete. Because there are separate SILs, AAIs and NAAQS for PM_{10} and $PM_{2.5}$, and also because the $PM_{2.5}$ evaluations require an evaluation of the ambient impacts of both direct and secondary $PM_{2.5}$, a plan may not be submitted that includes and addresses only PM_{10} emissions. If the separate data are not available, the lessee or operator must utilize the data for PM_{10} for its analysis of $PM_{2.5}$, (assuming the $PM_{2.5}$ is as high as the PM_{10}).

Finally, the proposed rule clarifies that all reporting of $PM_{2.5}$ must include the sum of filterable and condensable PM, if such information is available, in order to be complete.

550.205(h)(3)—Hydrogen Sulfide (H_2S)

To properly estimate the potential emissions of SO_X under this proposed paragraph, all emissions of SO_X that result from the flaring of H_2S would need to be included in the projected emissions of SO_X reported and analyzed as part of each plan. Under the proposed rule, if projected emissions of H_2S will potentially exceed the USEPA's Significant Emissions Rate for H_2S, as defined in 40 CFR 52.21(b)(23)(i), the lessee or operator must report the nature and extent of these emissions and their likely impact as part of its plan.

The proposed rule would specify that reporting of H_2S would be required to follow the USEPA's Oil and Natural Gas Sector New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews. These are described more specifically in "Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews," 77 FR 49489, RIN 2060–AP76, October 2012.

Aside from the proposed § 550.205, BOEM is also proposing to modify §§ 550.215 and 550.245 regarding H_2S such that if a lessee or operator proposes to flare gasses containing a potentially significant amount of H_2S, it must separately identify this activity in the plan and separately identify the resulting emissions of SO_X.

550.205(h)(4)—Methane (CH_4)

This rule implements BOEM's statutory authority under OCSLA section 5(a)(8) to regulate OCS air pollutant emissions from oil and gas operations in order to prevent adverse, localized air quality effects to adjacent States; since there are no significant localized air quality effects on the States associated with the emissions of methane from OCS facilities, BOEM is not proposing to regulate methane emissions in this context.

Under the proposed rule, the analysis or reporting of methane emissions would not be required unless specifically directed to the contrary. Consistent with current BOEM policy, any reference in these proposed regulations to major precursor air pollutants would exclude methane, because the USEPA does not include methane in the definition of VOCs and does not require a methane analysis of ground level ozone formation for offshore facilities; both because methane has not historically been considered a significant precursor air pollutant with respect to distances and transport times relevant to BOEM regulation of offshore activities; and because the USEPA has not elected to formally classify methane as a precursor pollutant for O_3. BOEM solicits comments on this proposed exclusion and on how BOEM should address the effects of methane emissions on secondary O_3 formation and under what circumstances it would be appropriate, in the event it decides to do so.

550.205(h)(5)—Ozone (O_3)

Over the past 35 years, extensive scientific evidence has increasingly demonstrated the importance of controlling O_3, and the significant potential harm this pollutant can cause. Additionally, as a result of improvements to single source photochemical modeling capabilities, it is now possible to evaluate much more accurately how the emissions of O_3 precursors may contribute to O_3 formation and how this may affect the air quality of the States. Reflecting the changes in the NAAQS and the improvement in modeling capabilities that have occurred over the past 35 years, BOEM is now proposing to evaluate O_3 directly for compliance with the NAAQS.

The proposed rule would not immediately require analysis or reporting of O_3. Rather, once the new emissions exemption studies have been completed, new EETs would likely be established to address O_3 impacts to the State. Proposed paragraph 550.304(b) details the circumstances when O_3 modeling would be required. Comments may be submitted as to how this would best be accomplished and at what point in time the implementation of these new standards would be most appropriate.

550.205(h)(6)—Lead (Pb) and Ammonia (NH_3)

Ammonia (NH_3) has been identified as a potentially significant precursor air pollutant for $PM_{2.5}$. The proposed rule would require reporting of NH_3 emissions, for any given source, if that information is available. Such a determination would be based on whether there are published manufacturer specifications of emissions factors for NH_3, whether such information could be obtained from the USEPA, or whether it could be obtained or could be derived from another recognized source, such as utilizing a mass balance approach.

Lead (Pb) is a CP for which NAAQS have been established. For this reason, consistent with the OCSLA mandate, like NH_3, reporting of Pb emissions would be required to the extent relevant information is available or could be derived from another recognized source, such as utilizing a mass balance approach.

Because of BOEM's obligation under OCSLA to ensure compliance with the NAAQS, BOEM is proposing that all emissions of NAAQS pollutants should normally be reported. If the lessee or operator intends to use a source known to emit a potentially significant amount of Pb or NH_3, then it must obtain a reasonable estimate of the associated Pb or NH_3 emissions. For that reason, the proposed rule specifies that zero emissions for Pb and NH_3 may be assumed only in the situation where relevant data are not available and neither the lessee or operator nor BOEM have a reason to anticipate that the emissions could be potentially significant.

Paragraph 550.205(i)—Distance Calculations

To determine the appropriate EET for each facility in a plan, the proposed rule would retain the requirement that the lessee or operator provide the distance in statute miles, from the shoreline, until such time as the new thresholds are established in 2020. Because the proposed rule intends to retain the current exemption methodology for a period of time and then replace that methodology,[74] two distance measures would be proposed in this rule. As is currently required by BOEM regulations, the first would be the distance from shore, as measured in a straight line from the site of each facility to the closer of the mean high water mark of a State or, on the Pacific coast, the mean higher high water mark, or the nearest Class I area of any State. The second would be the distance from a State's seaward boundary. For each facility described in the plan, the lessee or operator would be required to calculate and provide the distance in statute miles, as measured in a straight line from the site of the facility to the closest point at which the OCS borders any State, at the seaward boundary.

Paragraph 550.205(j)—Documentation

Unlike the current regulations, which do not specify any documentation or data retention requirements, the proposed rule outlines the data and recordkeeping requirements BOEM proposes to require to facilitate BOEM's evaluation and review of each plan and the corresponding operational activities that result from each plan. This information would be used to verify compliance with BOEM regulatory requirements and to ensure that compliance with such requirements continues on an ongoing basis.

The proposed rule would require lessees or operators to collect, create, and maintain records or any data or information establishing, substantiating, and verifying the basis for all information, data, and resources used to calculate their projected emissions under proposed section 550.205. The proposed rule would require documentation of the emissions factors used and retention of any appropriate certifications, citations, methods, and procedures used to obtain or develop emission factors. The proposed rule would require collection and maintenance of all documentation pertaining to the modeling analysis, if applicable, including all references and copies of any referenced materials, as well as any data or information related to any ERM lessees or operators propose or implement. Under the proposed rule, all such information would need to be provided to BOEM, though the Regional Supervisor would be able to waive this requirement for good cause or if BOEM is able to obtain the necessary information from an independent source.

Paragraph 550.205(k)—Compliance With Subpart C

The proposed rule would require lessees and operators to provide a description of how they will comply with proposed section 550.303 when the projected emissions generated by the proposed plan activities exceed the respective EETs. The proposed rule would require lessees and operators to make this determination using the formulas in proposed paragraph 550.303(c). If the lessee or operator would be subject to the requirement to monitor and report its actual emissions in accordance with section 550.311, then the description must address how it proposes to monitor its emissions.

Paragraph 550.205(l)—Reporting

The proposed rule would require lessees and operators to submit data and information in a format and using the forms specified by BOEM. They would be required to submit information in an electronically-readable spreadsheet, such as a Microsoft Excel file on a compact disc, unless otherwise directed by the Regional Supervisor. The purpose of this requirement is to facilitate the evaluation of data by automated processes and systems. Under the current arrangement, data are submitted to BOEM in approved Excel spreadsheets. Although the proposed rule does not specify a specific format for electronic forms, it is likely the current spreadsheets will continue to be used for the foreseeable future.[75]

The USEPA is currently working on an E-Enterprise solution for emissions data collection, whereby facilities (or companies) would report emissions data through a central place for distribution to USEPA, the States, and others. Since BOEM is proposing direct facility reporting as well, BOEM may elect to partner on this E-Enterprise solution for supporting BOEM's needs alongside those of the USEPA. This approach may be more efficient both for the regulated entities as well as for USEPA and BOEM to use and share the data. BOEM welcomes comment on this alternative and whether there may be any impediments or complications should BOEM wish to move in this direction.

If lessees and operators elect to transmit the information to BOEM electronically, such as by email, then they would be required to use a delivery medium or transmission method authorized by BOEM. The purpose of this requirement is to ensure any data or information provided to BOEM is provided in a secure and safe manner and such information is not submitted in a way (*e.g.*, email) that could be intercepted or manipulated by third parties. DOI has established standards and requirements for the secure transmission of data on an approved technology platform and BOEM intends to adhere to DOI requirements (although it may do so using a BOEM-specific transmission mechanism, such as the Technical Information Management System Web-based application, abbreviated TIMS-Web).

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[74] As discussed in the context of proposed § 550.303(c), the proposed rule would continue to retain the shoreline as the point at which emissions are evaluated until such time as the new scientific studies have been completed and new exemption thresholds have been defined. At that time, BOEM would evaluate all emissions at the SSB and any facility that generates emissions in excess of a SIL at the SSB would have to apply ERM. For this reason, the distance calculation used by the exemption formulas would be the distance to shore, in the first instance, and the distance would be the distance to the SSB, in the second instance.

[75] Currently, BOEM utilizes OMB-approved forms BOEM–0134 and BOEM–0135 for this purpose. The forms are being revised in connection with this rulemaking. BOEM also solicits comments on the proposed new forms, in terms of their usefulness, readability, complexity and completeness.

Paragraph 550.205(m)—Additional Information

Proposed § 550.205(m) would set out the circumstances under which a lessee or operator would be required to include information about emissions from aircraft and from those onshore support facilities for which the lessee or operator does not have an USEPA or State agency air quality permit (*i.e.*, "a non-permitted onshore facility"). The proposed requirement would be triggered when the modeling of air emissions indicates that a plan's proposed emissions would cause an increase in the ambient air quality at any receptor location that exceeds 95% of a SIL. If an operator or lessee would be required to report emissions from any aircraft or non-permitted onshore support facilities and they support multiple OCS facilities, the lessee or operator would be required to allocate their emissions in an appropriate manner similar to that described for MSCs. Under such circumstances, a lessee or operator would be required to include such emissions in the information required under proposed section 550.205 and proposed subpart C. The proposed rule would also permit the Regional Supervisor to require such additional data or information related to these sources as is necessary to demonstrate the plan's compliance with subpart C of this part, and/or applicable federal laws related to the protection of air quality within BOEM jurisdiction.

Paragraph 550.205(n)—Requirements for Plans To Be Deemed Submitted

In order for a plan to be deemed submitted, all of the required air quality data and information would be required to be submitted to BOEM in accordance with the requirements of this part. BOEM would not initiate its review of the air quality component of any plan until all of the necessary information and documentation is complete. To facilitate this, the proposed rule would specify that a plan would not be deemed submitted in accordance with the requirements of § 550.231 or 550.266 of this part until:

(1) All of the requirements of this section have been completed;

(2) The lessee, or operator, has completed the AAI analysis as specified in § 550.307(b) of this part, if it is required; and

(3) The lessee, or operator, has completed any other analysis required by subpart C of this part.

Section 550.211—What must the EP include?

Paragraph 550.211(c)—Drilling Unit

The current regulation at § 550.211(c) includes a provision that requires a description of the "fuels, oil and lubricants that will be stored on the facility." The regulations state the word "facility" is defined in § 550.105. However, the section to which the current regulations refer no longer exists in BOEM's regulations. That provision was originally in the regulations administered by BOEM's predecessor before it was divided into BOEM and BSEE, and was subsequently moved into the BSEE regulations at § 250.105.

The original definition of the term "facility," to which the references in §§ 550.211 and 550.241 refer, was: "a vessel, a structure, or an artificial island used for drilling, well completion, well-workover, or production operations." Because this definition of facility no longer exists, BOEM is proposing to add this definition back into §§ 550.211 and 550.241 where its use remains applicable, with minor modifications for clarity. No substantive change to § 550.211 or 550.241 is being proposed.

For the purpose of this section, the term facility would mean any installation, structure, vessel, vehicle, equipment or device that is temporarily or permanently attached to the seabed of the OCS, including an artificial island used for drilling, well completion, well-workover, or other operations.

Section 550.212—What information must accompany the EP?

This section describes the information that must be included in an EP. The change to the proposed rule for this section would update the cross-reference in § 550.212(f) from §§ 550.218 to 550.205, since the air quality requirements of § 550.218 are proposed to be relocated there.

Section 550.215—What hydrogen sulfide (H_2S) information must accompany the plan?

Paragraph 550.215(d)(2)—Hydrogen Sulfide

Under the proposed rule, if the H_2S emissions are projected to affect any location within a State in a concentration greater than 10 parts per million, the modeling analysis would need to be consistent with the USEPA risk management plan methodologies outlined in 40 CFR part 68. The only change made with this revision would be that the concentration of 10 parts per million would be measured at any point within the State including any point landward of the SSB, not only onshore, as is currently the case.

Paragraph 550.215(e)—Hydrogen Sulfide

As explained above in the discussion of § 550.205, the proposed rule would amend this section and section 245 by adding a paragraph in each to specify flaring of any gasses containing a potentially significant amount of H_2S would be required to be separately identified in the plan, along with the resulting emissions of SO_X.

Section 550.218—What air emissions reporting must accompany the plan?—Removed and Reserved

Sections 550.218 and 550.249 in the current regulations set forth the air quality reporting requirements of subpart B for exploration plans and development plans, respectively. All of the substantive requirements from these two sections would be consolidated into the new proposed section 550.205 and modified as discussed above. Accordingly, §§ 550.218 and 550.249 would become reserved.

Section 550.224—What information on support vessels, offshore vehicles, and aircraft must accompany the plan?

Paragraph 550.224(a)—General

Current regulations require plans to include a description of the vessels, offshore vehicles, and aircraft lessees and operators would use to support their exploration activities (§ 550.224(a)) or their development and production activities (§ 550.257(a)). The proposed rule would reword paragraph (a) of the proposed sections for clarity and to incorporate the term MSC, proposed for definition in this rule, but the meaning and intent of these paragraphs would not be changed. The proposed rule would retain the current requirement to include in the description an estimate of the storage capacity of the fuel tanks and the frequency of visits to the facilities in connection with any proposed activities.

Paragraph 550.224(b)—Air Emissions

Paragraph (b) of both the current paragraphs (§§ 550.224(b) and 550.257(b)) requires plans to include information regarding air emissions from vessels, vehicles, and aircraft described in the plan. The proposed rule would replace this paragraph with a cross-reference to proposed § 550.205. That proposed section, described above, would provide details about what emissions information for MSCs must be included in a plan. However, that proposed section would not generally require information on aircraft emissions. As explained above, aircraft emissions contribute only a small fraction of emissions, and aircraft emissions information is especially burdensome to collect. Accordingly, BOEM believes it is not prudent to require lessees and operators report aircraft emissions in most cases. The proposed rule would normally only require general information about aircraft used in a plan under proposed paragraph (a), since it is necessary for the Regional Supervisor to verify whether emissions from these sources may contribute to exceeding an emission exemption threshold or an AAQBS. In some limited circumstances, where the emissions of aircraft may be determinative of whether the plan does or does not cause a significant impact to any State or tribe, the reporting of aircraft emissions may be required, as described in proposed § 550.205(m).

Section 550.225—What information on the onshore support facilities must accompany the plan?

Paragraph 550.225(b)—Air Emissions

The current paragraph (b) of both §§ 550.225 and 550.258 requires lessees and operators to provide in their plans a description of the source, composition, frequency, and duration of the air emissions likely to be generated by the relevant onshore support facilities. The proposed rule would not substantively change this requirement, but the proposed rule would revise it for clarity. The proposed rule would delete the parenthetical text in the current paragraphs—"attributable to your proposed exploration activities" and "attributable to your proposed development and production activities"—in order to avoid confusion with the use of the term "attributed emissions" in proposed § 550.205.

The proposed rule would limit the current requirement for onshore emissions sources in order to reduce unnecessary reporting and focus reporting requirements on areas with the greatest potential impact. BOEM currently requires reporting of onshore support facility emissions as may be necessary for the Regional Supervisor to determine whether emissions from these sources may contribute to exceeding an EET or an AAQSB, as described in the preamble section on proposed § 550.205(m). This requirement in the current regulations is based on the premise that there may be some circumstances where the amount of air pollution generated by onshore support facilities, taken in conjunction with the offshore emissions associated with OCS operations, could have a potentially significant impact to the air quality of the States. However, BOEM believes that the requirement can be made more appropriately tailored to limit unnecessary reporting, while still incorporating select onshore emissions information in appropriate circumstances. As described more fully in the preamble discussion of proposed § 550.205(m), the proposed rule would collect information on onshore support emissions if two specific criteria are both met: (1) If a plan which is already required to conduct modeling results in incremental increases in concentration of a pollutant that are greater than 95 percent of the value of a SIL (this is the same criteria that applies to the inclusion of aircraft); and (2) if the relevant onshore support facilities are not already permitted by the USEPA or a relevant State authority. The goal of this proposed provision is to incorporate significant data that may contribute to OCS permitted activity affecting the air quality of the states but to avoid collecting unnecessary information. BOEM solicits comments on this proposal, both with respect to whether gathering data on onshore support facilities is necessary and/or appropriate and what criteria should be used to determine the circumstances under which data about onshore support facility emissions should be collected.

BOEM uses the information that would be required in this paragraph for the analysis of cumulative impacts it performs under NEPA. The proposed rule would also provide that the information regarding onshore support facilities would only be required by BOEM if it is not available from another agency. BOEM can obtain some of the information for proposed and existing onshore support facilities for use in its NEPA or other environmental analyses through the USEPA or other air quality agencies.

BOEM solicits comments on what types of onshore facilities should be identified and reported with respect to their air emissions and how best to evaluate their emissions in the context of the AQRP.

Section 550.241—What must the DPP or DOCD include?

Paragraph 550.241(c)—Drilling Unit and Paragraph 550.241(d)—Production Facilities

The change proposed here is analogous to the change proposed at § 550.211. The current regulations at § 550.241(c) and (d) include provisions that require a description of drilling units and production facilities in a DPP or DOCD. This description includes "fuels, oil and lubricants that will be stored on the facility" or "the estimated maximum quantity of fuels and oil that will be stored on the facility," respectively. The current regulations state the word "facility" is defined in § 550.105(3). However, the section to which the current regulation refers no longer exists in BOEM's regulations. That provision was originally in BOEM's predecessor's regulations before it was divided into BOEM and BSEE and was subsequently moved into the BSEE regulations at § 250.105.

The original definition of the term facility, to which the reference in § 550.241 refers, was: "a vessel, a structure, or an artificial island used for drilling, well completion, well-workover, or production operations." Because this definition of facility no longer exists, BOEM is proposing to add this definition back into § 550.211(c) and in § 550.241, with minor modifications for clarity. No substantive change to § 550.241 is being proposed.

For the purpose of this section, the term facility would mean any installation, structure, vessel, vehicle, equipment or device that is temporarily or permanently attached to the seabed of the OCS, including an artificial island used for drilling, well completion, well-workover, or other operations.

Section 550.242—What information must accompany the DPP or DOCD?

This section describes the information that would be required to be included in a DPP or DOCD. The change to the proposed rule for this section would update the cross-reference in § 550.212(g) from §§ 550.249 to 550.205, since the air quality requirements of § 550.249 are proposed to be relocated there.

Section 550.245—What hydrogen sulfide (H_2S) information must accompany the plan?

Paragraph 550.245(d)(3)—Hydrogen Sulfide Emissions

See the discussion for § 550.215(d)(2).

Paragraph 550.245(e)—Hydrogen Sulfide

See the discussion for § 550.215(e).

Section 550.249—What air emissions reporting must accompany the plan?

See the discussion for § 550.218.

Section 550.257—What information on support vessels, offshore vehicles, and aircraft must accompany the plan?

Paragraph 550.257(a)—General and Paragraph 550.257(b)—Air Emissions

See the discussion for § 550.224.

Section 550.258—What information on the onshore support facilities must accompany the plan?

Paragraph 550.258(b)—Air Emissions

See the discussion for § 550.225.

Section 550.280—How must I conduct activities under the approved EP, DPP, DOCD, RUE, pipeline ROW, or lease term pipeline application?

The proposed rule would modify the title of this proposed section from "How must I conduct activities under the approved EP, DPP, or DOCD?" to "How must I conduct activities under the approved EP, DPP, DOCD or RUE, pipeline ROW, or lease term pipeline application?" In addition, the proposed rule would modify paragraph (a) of the current regulations, which specifies that a lessee or operator must conduct all of its activities in accordance with an approved EP, DPP, or DOCD and any approval conditions. This provision would be modified to clarify that a lessee or operator may not install or use any facility, equipment, vessel, vehicle, or other emissions source not described in the approved EP, DPP, DOCD, or application for RUE, pipeline ROW, or lease term pipeline and that a lessee or operator may not install or use a substitute for any emissions source described in an EP, DPP, DOCD, or application for a RUE, pipeline ROW, or lease term pipeline without prior BOEM approval.

Section 550.284—How will BOEM require revisions to the approved EP, DPP, DOCD, or application for a RUE?

Paragraph 550.284(a)—Periodic Review

The proposed rule would modify the title of the section from "How will BOEM require revisions to the approved EP, DPP, or DOCD" to "How will BOEM require revisions to the approved EP, DPP, DOCD or application for a RUE?"

Paragraph (a) of the current section specifies the Regional Supervisor will periodically review the activities conducted under an approved EP, DPP, or DOCD and the frequency and extent of this review is based upon changes to "available information and onshore or offshore conditions." The proposal would modify this paragraph to clarify that the frequency and extent of the review may be based on any changes in applicable law or regulation as well. Existing § 550.284(b) allows the Regional Supervisor to require modifications to plans based on such a review. The proposed rule would not change this paragraph. As discussed below, proposed § 550.310(c) would complement the proposed change to § 550.284(a) by making explicit that the Regional Supervisor may require a lessee or operator to submit a revised plan when an applicable AAQSB changes. BOEM does not anticipate that it would invoke this provision except in extraordinary circumstances and, even under those extraordinary circumstances, it would rarely, if ever, require the resubmission of a plan under this provision more frequently than every ten years.

C. 30 CFR Part 550, Subpart C

Subpart C is being replaced in its entirety with a new subpart C dedicated to air pollution prevention and control.

Section 550.301—Under what circumstances does this subpart apply to operations in my plan?

This section would specify that the proposed subpart applies to those areas of the OCS where DOI has authority to regulate air emissions pursuant to section 5(a)(8) of the OCSLA, 43 U.S.C. 1334(a)(8), as amended, and jurisdiction pursuant to section 328(b) of the CAA, 42 U.S.C. 7627(b), as amended. This section explains the proposed subpart would apply to all plans related to facilities on the relevant areas of the OCS, regardless of the type of plan (EP, DPP, or DOCD or application for a RUE, pipeline ROW, or lease term pipeline). The section would also state that the subpart covers existing facilities in the relevant areas.

Section 550.302—Acronyms and Definitions Concerning Air Quality

Paragraph (a) of the proposed rule would update the acronym list used to identify those acronyms that are relevant to the proposed rule. In addition, the proposed rule would clarify that the definitions proposed to be added or revised in proposed § 550.302 are meant to apply only to § 550.205 of subpart B and all of subpart C.

Deleted Definitions

The following three terms in the current definitions § 550.302 would be removed from the list of definitions in proposed § 550.302: "source," "temporary facility," and "volatile organic compound." The proposed rule would move the term "source," renamed "emissions source," from § 550.302 into proposed § 550.105, because it would be used in portions of part 550 outside of subpart C. The term "temporary facility" would be replaced with a new term "short-term facility" (although the meaning and purpose of the term would be similar). The proposed rule would not define the term "volatile organic compound," since other CPs and precursor pollutants would also not be defined in the regulations and because BOEM applies the common meaning of this term, as used by the USEPA and other federal agencies.

New or Revised Definitions

Paragraph (b) would list the definitions used in subpart C, as follows.

Air Quality Control Region (AQCR)

AQCR would be newly defined to mean "an interstate area or major intrastate area, which the USEPA deems appropriate for assessing the regional attainment and maintenance of the primary or secondary national ambient air quality standards described in 42 U.S.C. 7409, as identified under 40 CFR part 81, subparts A and B, Designation of Air Quality Control Regions."

Ambient Air Increments (AAIs)

AAIs would be newly defined to mean "the national standards for Ambient Air Increments set out in the table in 40 CFR 52.21(c), as amended." These are national ambient air benchmarks that represent the maximum increase in pollutant concentrations allowed for an onshore area of a State designated by the USEPA as a Class I, Class II, or Class III area. Depending on the level of the AAIs, various ERM may be required by BOEM under subpart C. In the current BOEM regulations, the AAIs are referred to as the MACIs, as set out in the table in the current regulation at 30 CFR 550.302.

Ambient Air Standards and Benchmarks (AAQSB)

AAQSB would be newly defined to refer collectively to all of the standards and benchmarks referenced in this proposed subpart. These would include the SILs, in 40 CFR 51.165(b)(2) (pursuant to 42 U.S.C. 7401 *et seq.*); the AAIs, as set out in the table in 40 CFR 52.21(c) (pursuant to 42 U.S.C. 7473); and the primary and secondary NAAQS defined in 40 CFR part 50 (pursuant to 42 U.S.C. 7409).

Attainment Area

The current regulations define this term in § 550.302, and the proposed rule would revise the definition. The proposed rule would modify the definition of attainment area to mean "for any given criteria air pollutant, a geographic area, which is not designated by the USEPA as being a designated non-attainment area, as codified at 40 CFR part 81 subpart C." Thus, any area not specifically listed by the USEPA as a designated non-attainment area would be classified as an attainment area under this proposed rule, including areas that the USEPA's regulations refer to as attainment, maintenance, unclassifiable, or unclassifiable/attainment as well as areas that have not yet been designated because the two-year period to complete such designations after revision of a NAAQS has not yet passed. The proposed definition would also clarify that the same area may constitute an attainment area for one criteria air pollutant and a designated non-attainment area for another criteria air pollutant (see definition of non-attainment area). Second, because there may be multiple NAAQS averaging times for each CP, any given area may be attainment for one pollutant for one averaging time and non-attainment for the same pollutant over a different averaging time. Third, this definition would clarify that the term attainment area, as used by BOEM, is intended to include onshore unclassifiable areas (*i.e.*, areas that cannot be classified as attainment or designated non-attainment areas) or any other areas that the USEPA has not explicitly classified as designated non-attainment.

Attributed Emissions

This new term would be defined to mean "for any given criteria or precursor air pollutant the emissions from MSCs, operating above the OCS or State submerged lands, that are attributed to a facility pursuant to the methodology set forth in § 550.205(d), for the period over which the corresponding facility emissions are measured." BOEM intends for this proposed definition to encompass the emissions that are generated from non-stationary sources that support a plan-related facility and must be evaluated in connection with the air quality component of the plan review. The specific requirements for calculating attributed emissions are set out in proposed § 550.205(d).

Given that BOEM is proposing to provide various alternative methods to calculate attributed emissions, it may be possible these alternatives could yield slightly different overall results and the option chosen may not result in the highest potential calculation of attributed emissions that might be derived. Providing for these alternative methods reflects the reality that all relevant or necessary data may not be available to a lessee or operator at the time its plan is prepared and submitted to BOEM. Regardless of the ultimate method used to allocate MSC emissions and derive attributed emissions, however, no lessee or operator will be allowed to emit air pollutants in an amount that exceeds what was approved in its plan and a lessee or operator generating emissions in excess of its plan approval could be subject to sanctions, including potential shut-in for a violation. In addition, under this proposed rule, there are specific monitoring and record-keeping provisions that would be added to ensure ongoing compliance with the proposed regulations. For this reason, BOEM anticipates that lessees or operators will be conservative in emissions allocations.

Background Concentration

This new term would be defined to mean "the ambient air concentration of any given criteria air pollutant that arises both from local natural processes and from the transport into the airshed of natural or anthropogenic pollutants originating locally or from another location, either as measured from an USEPA-approved air monitoring system or as determined on some other appropriate scientifically justified basis, as approved by BOEM." The background concentration of a pollutant represents the concentration of any given pollutant that is present prior to the establishment of operations related to a proposed facility.

Evaluating compliance with the NAAQS requires the consideration of two factors, (1) the background concentration of any given pollutant at the point of measurement, and (2) the contribution to the concentration that would be generated as a result of the facility being proposed. The incremental amount of the pollutant that is contributed by the operations associated with a plan is added to the background concentration of that pollutant in order to determine the amount of pollution that would exist as a result of the implementation of the proposed plan. The sum of the background concentration for any given pollutant and the incremental amount of the pollutant resulting from the implementation of the proposed plan is referred to as the design concentration of that pollutant. That design concentration represents the value that is compared to the NAAQS in order to determine whether or not the plan, if implemented as proposed, would cause an exceedance.

Baseline Concentration

The term baseline concentration would be defined as the ambient background concentration of any given air pollutant which exists or existed at the time of the first application for a USEPA PSD permit in an area subject to sec. 169 of the CAA, based on air quality data available to the USEPA or a State air pollution control agency and on the monitoring data provided in the permit application. The proposed definition would also state that the baseline concentration is distinguished from the background concentration in that the background concentration changes continually over time to reflect the current ambient air concentration for any given air pollutant, whereas the baseline concentration remains fixed until such time as a new AAI is established for an attainment area. The difference between the current background concentration and the baseline concentration represents the change in actual concentration of a given pollutant in a relevant area caused by natural and/or anthropogenic (*i.e.*, other stationary and non-stationary) sources that began operations after the date the baseline concentration was established.

Best Available Control Technology (BACT)

This term would be revised from the definition that exists in the current regulation. The proposed rule would define BACT to mean "a physical or mechanical system or device that reduces emissions of air pollutants subject to regulation to the maximum extent practicable, taking into account (1) the amount of emissions reductions necessary to meet specific regulatory provisions; (2) energy, environmental, and economic impacts; and (3) costs." This proposed definition and usage of the term would differ from that of the USEPA, because the USEPA's use of BACT refers to changes made in connection with the USEPA's permit process under the CAA, and BOEM does not issue air quality permits, nor does it make determinations of BACT pursuant to the CAA. Rather, BOEM requires (and is proposing to continue requiring) BACT in its review and approval of plans for which modeling has demonstrated that projected emissions may cause or contribute to an exceedance of an applicable AAQSB or a violation of the NAAQS.

In addition, BOEM and the USEPA differ in their requirements for BACT, primarily due to the difference in their respective regulatory frameworks. BOEM reviews the BACT alternatives as part of its AQRP, under both the current regulation and the proposed rule prospectively, determining in advance of the facility installation what form of BACT is appropriate. The USEPA also evaluates BACT prospectively, but the CAA also specifies, among other requirements, that BACT cannot be less stringent than any applicable standard of performance under the New Source Performance Standards (NSPS) (42 U.S.C. 7479(3)). Therefore, although BOEM looks to USEPA practices when evaluating control technologies, due to the unique nature of the OCS, BOEM also exercises independent judgment on what constitutes BACT and how it should be applied. This definition also clarifies that BACT, as used in this rule, is intended to refer to physical or mechanical controls (*i.e.,* changes to the equipment and technology), in contrast to operational controls that would primarily involve changes in the ways that equipment is operated (rather than changes to the equipment itself).

With reference to "the maximum extent practicable," under certain circumstances, VOCs must be fully reduced to a rate at or below the EETs (including through the use of BACT) whether or not such a reduction would be considered practicable, unless emissions credits can be applied (see § 550.303(f)). In other words, under some circumstances a plan could not be approved because the level of VOC emissions would be too high, regardless of whether some "practical" method were available and if available was proposed to be applied to mitigate or reduce the emissions. In that rare instance, the only acceptable means to obtain approval of the plan would be for the lessee or operator to obtain emissions credits to offset the effects of the excessive VOC emissions.

Class I Area

The current regulations use this term but do not define it. Because it is used more broadly in the proposed rule, BOEM proposes to define it in the regulations. The proposed rule would define this term to mean "an area designated by the USEPA, a State, or a Federally-recognized Indian tribe, where visibility and air emissions are protected by a Federal Land Manager, and protected to standards more stringent than the NAAQS pursuant to 42 U.S.C. 7472(a) or 7474, as amended;[76] Class I areas include international parks and certain national parks, wilderness areas, national monuments, and areas of special national or regional natural, recreational, scenic, or historic value." Congress has established a program to designate specific areas of the country as Class I areas, and the USEPA defines these areas in its regulations at 40 CFR part 81 subpart D. Several tribes have also requested USEPA to redesignate their lands from Class II to Class I to provide additional air quality protection.[77]

Class II Area

Like the term "Class I area," the current regulations use "Class II areas" but do not define the term. The proposed rule would define Class II area to mean "an attainment area designated by the USEPA, a State, or a Federally-recognized Indian tribe, that is protected less stringently than a Class I area." A Sensitive Class II area classification indicates a place the Clean Air Act would allow a moderate change in the air quality, but where stringent air quality constraints are nevertheless desired. This classification is less stringent than for a Class I area, which describes a place where minimal air quality degradation would be allowed, and more stringent than that of a Class III area, which indicates a place where substantial industrial or other growth would be allowed. Sensitive Class II areas (see definition of this term, below) represent a subset or sub-classification of Class II areas that are defined by federal land management agencies as federal lands where the protection of air resources has been prioritized, as specified in acts, regulations, planning documents, or by policy.

Complex Total Emissions

The proposed rule would define this new term to mean "the sum of the facility emissions that would result from all of the facilities that have been aggregated for the purposes of evaluating their potential consolidated impact on air quality, pursuant to the methodology set forth in § 550.303(d), and the sum of all corresponding attributed emissions for those facilities." For the purposes of calculating complex total emissions, such emissions could include the emissions from pipeline vessels, bury barges, and lay barges during those periods of time while they are temporarily connected to the seabed on the OCS as long as these vessels meet the other requirements for complex total emissions consolidation. The proposed requirement to consolidate air emissions from multiple facilities in certain circumstances is described in more detail at the discussion of proposed § 550.303(d).

Criteria Air Pollutant or Criteria Pollutant

Criteria air pollutants are those pollutants for which the USEPA sets NAAQS. The proposed rule would add this new term (also referred to as criteria pollutant) (CP) to the proposed definitions section and would be defined to mean "any one of the principal pollutants for which the USEPA has established and maintains a NAAQS under 40 CFR part 50 and in accordance with 42 U.S.C. 7409, as amended, for the protection of public health and welfare." The proposed rule clarifies that the USEPA has established primary standards for the protection of public health, including sensitive populations, and it has established secondary standards for the protection of public welfare from adverse effect, including those related to effects on vegetation, ecosystems, and visibility. The proposed rule would clarify criteria air pollutants do not include VOCs or any other precursor air pollutant not already regulated under the NAAQS. Precursor pollutants are defined under the definition of precursor air pollutant or precursor pollutant as explained later in this rulemaking.

The proposed rule would define CP so it has the identical meaning as used by the USEPA. In those situations where BOEM intends for the proposed rule to refer only to CPs rather than all air pollutants, it has drafted the proposed rule so it specifically uses the term "criteria pollutant."

Design Concentration

The proposed rule would define design concentration to mean "the pollutant concentration at a given location projected, through computer-simulated air dispersion or photochemical modeling, as described under 40 CFR part 51, appendix W, section 7.2.1.1 to result from your projected emissions, combined with the background concentration for the same pollutant, averaging time, and statistical form at the most appropriate receptor location." Each NAAQS has both an averaging time and a statistical form. The statistical form tells how the concentration level would be violated. For instance, the "statistical form" of the annual NO_2 NAAQS is the annual mean measured over three years.

The design concentration of any given CP is compared against the NAAQS in order to determine whether or not the activities in a proposed plan, together with the background concentrations, would exceed any NAAQS at any point landward of the SSB. The appropriate background concentration is measured from the nearest point at which there is data from an USEPA-approved air monitoring system, or as determined on some other appropriate scientifically justified basis approved by BOEM. The design concentration of any given CP is compared against the NAAQS in order to determine whether or not the activities in a proposed plan would cause the concentration of that pollutant at any point landward of the SSB to exceed the level of the NAAQS. This approach takes into consideration the pre-existing ambient air concentration of that criteria air pollutant (*i.e.,* the background concentration), as well as the increment added as a result of the emissions generated by operations associated with the proposed plan, in determining what the impact of the plan's emissions will likely be at any given location.

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[76] The USEPA's guidance to tribes on Class I redesignations is available here: *http://www3.epa.gov/air/tribal/pdfs/GuidanceTribesClassIRedesignationCAA.pdf.*

[77] For example, the Northern Cheyenne Reservation, the Flathead Indian Reservation, the Fort Peck Indian Reservation, the Spokane Indian Reservation and the Forest County Potawatomi Community Reservation. See 40 CFR 52.1382(c), 52.2497(c) and 52.2581(f).

Dispersion Modeling

This new term would be defined to mean "the mathematical computer simulation of air emissions being transported from a source through the atmosphere under given meteorological conditions. Emissions from sources, expressed as the rate of air pollutants emitted over time (*i.e.,* pounds per hour), are translated through computer modeling into pollutant concentrations, expressed in units of micrograms of pollutants per cubic meter of ambient air (μg/m^3), or in parts per million or billion, depending on the circumstances."

The dispersion model must take various factors into account, including the amount of air emissions generated by the proposed facility and the relevant meteorological conditions that would apply at the proposed facility site, the nearby coast, and over submerged State lands. The proposed rule would clarify that when a file containing meteorological and emissions data are evaluated, the computer model is used to project the concentrations of the pollutants at a receptor location.

Under the proposed subpart C of this part ("Air Quality Analysis, Control, and Compliance"), in the event that proposed operations exceed EETs, results of dispersion and photochemical modeling would be used to project the potential for a source to have a significant adverse effect on the air quality of a State onshore or at the SSB, and to discern whether the control of an individual emission source would have the desired effect of reducing the emissions' impact for compliance with the AAQSB.

Emission Control Efficiency (ECE)

This new term would be defined to mean the effectiveness of ERM for any given emissions source and air pollutant. The greater the emission control efficiency (ECE), the greater the relative effectiveness of the underlying controls. ECE measures effectiveness on a relative basis (*i.e.,* as a percent of the pollution being reduced), rather than in absolute terms (*i.e.,* the total reduction in the annual tonnage of the pollutant emitted). ECE varies from 100%, representing a control that completely eliminates emissions, to zero, representing a control that has no effect on such emissions. The proposed rule would describe the requirements relating to ECE at proposed § 550.309.

Emissions Credits

The proposed rule would supplement the use of the term "emissions offsets" with the broader term "emissions credits." Emissions credits include emissions offsets as a subset. Emissions credits represent emissions reductions from emission sources that have nothing to do with the proposed plan or any facility or MSC associated with the plan.

The definition of this term would be revised to mean "emissions reductions from an emissions source(s) not associated with the plan that are intended to compensate for the excessive emissions of criteria or precursor air pollutants, regardless of whether these emissions credits are acquired from an emissions source(s) located either offshore or onshore, including: (1) Emissions offsets generated by the lessee or operator directly; or (2) emissions offsets acquired from a third party; or (3) trading allowances or other alternative emission reduction method(s) or system(s) associated with a market-based trading mechanism, such as a mitigation bank, or through other market oriented or competitive markets where these assets are exchanged." Emissions credits are intended to compensate for excessive emissions associated with any given plan. The new term "emissions credits" is intended to have broader application than the existing defined term "emissions offsets." The proposed definition is intended to account for any reduction in emissions from an emission source not associated with the plan, whereas the existing definition only includes reductions from facilities. The proposed defined term is used in subpart C to reflect a proposed change whereby an emissions reductions of an equivalent amount would be allowed in lieu of BACT or other emissions reductions measures, regardless of whether such reductions are achieved on sources owned by the lessee or operator or a third-party or regardless of whether the reduction is obtained through the use of a market-based trading mechanism, such as a mitigation bank. USEPA operates a number of multi-State market-based emissions trading programs. Because these programs have broad geographic coverage, purchase of allowances from one of these programs would not be certain to reduce emissions from sources in any particular AQCR. The intent of the proposed requirement is that the purchase of emissions credits result in actual emissions reductions in the affected State. Consequently, such multi-State trading programs might not be an appropriate source of emission credits under the proposed rule.

Emission Exemption Thresholds (EET)

The proposed rule would define this term to mean "the maximum allowable rate of projected emissions, calculated for each air pollutant, expressed as short tons per year, above which facilities would be subject to the requirement to perform modeling." The emission exemption threshold formulas are in proposed § 550.303.

Emissions Factor(s)

The proposed rule would define this term to mean a value that relates the quantity of a specific air pollutant released into the atmosphere with the operation of a particular emissions source. The proposed rule would clarify emissions factors are usually expressed as the mass of pollutant generated from each unit (*e.g.,* mass, volume, distance, work, or duration) of activity by the emissions source emitting the pollutant.

Emission Reduction Measure(s) (ERM)

The proposed rule would define emission reduction measure(s) (ERM) to mean any emissions credit(s), operational control(s), equipment replacement(s), or BACT, applied on either a temporary or permanent basis, to reduce the amount of criteria or precursor air pollutant emissions that would occur in the absence of the application of such measures.

Existing Facility

The current regulations define this term as "an OCS facility described in an Exploration Plan or a Development and Production Plan submitted or approved before June 2, 1980." The proposed rule would define this term to mean "an operational OCS facility described in an approved plan." The existing definition is much narrower than the proposed one, because the existing definition is both limited to facilities described in EPs and DPPs (*i.e.,* excluding DOCDs) and to those facilities described in plans submitted prior to June 2, 1980.

Facility

The proposed rule would revise the definition that exists in the current regulation. The proposed rule would define the term "facility" used in proposed § 550.205 and proposed subpart C to mean "any installation, structure, vessel, vehicle, equipment, or device that is temporarily or permanently attached to the seabed of the OCS, including but not limited to a dynamically positioned ship, gravity-based structure, manmade island, or bottom-sitting structure, whether used for the exploration, development, production, or transportation of oil, gas, or sulphur." The proposed rule would specify all installations, structures, vessels, vehicles, equipment, or devices directly associated with the construction, installation, and implementation of a facility would be considered part of a facility while located at the same site, attached, or interconnected by one or more bridges or walkways, or while dependent on, or affecting the processes of, the facility, including any ROV while attached to the facility. The proposed rule would also specify that one facility may include multiple drill rigs, drilling units, vessels, platforms, installations, devices, and pieces of equipment. Also, under the proposed rule, MODUs, even while operating in the "tender assist" mode (*i.e.,* with skid-off drilling units), and any other vessel engaged in drilling or downhole operations, including well-stimulation vessels would be treated as facilities for purposes of evaluating air emissions. Under the proposed rule, the term would also include all Floating Production Systems (FPSs), including Column-Stabilized-Units (CSUs), Floating Production, Storage and Offloading facilities (FPSOs), Tension-Leg Platforms (TLPs), and spars. The proposed rule would also provide any vessel used to transfer production from an offshore facility be considered part of the facility while physically attached to it. Finally, the proposed rule would specify all DOI-regulated pipelines be considered facilities, as would be any installation, structure, vessel, equipment, or device connected to such a pipeline, whether temporarily or permanently, while so connected. The proposed rule would therefore require both lease-term pipeline installations and right-of-way pipeline installations to comply with BOEM's air quality regulations.

The current regulation defines facility, as used in subpart C, as: "[A]ny installation or device permanently or temporarily attached to the seabed which is used for exploration, development, and production activities for oil, gas, or sulphur and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil, gas, or sulphur at a single site. Any vessel used to transfer production from an offshore facility shall be considered part of the facility while physically attached to it."

The proposed definition would be similar to the current definition in at least two ways. First, an onshore facility or onshore support facility would not constitute a "facility" under the proposed definition. Second, under the proposed rule one facility might include multiple drill rigs, drilling units, vessels, platforms, installations, devices, and pieces of equipment.

The proposed rule would generally reorganize the substance of the current definition and provide examples and more explanatory text. In addition, there are several notable substantive changes proposed. First, the proposed rule would revise the definition by eliminating the requirement that a facility "emit or have the potential to emit any air pollutant from one or more sources." This limitation could have been read to imply that, for example, since sub-sea tiebacks and other subsea devices do not themselves emit air pollutants, vessels engaged in installing them were not facilities even though they were connected to the seabed of the OCS. Removing this limitation would make clear that any vessel which is temporarily or permanently attached to the seabed such as a well-stimulation vessel or a pipeline laying vessel connected via a subsea tieback, would be considered a facility for the purposes of evaluating air emissions. Such a vessel would be considered an MSC when not attached to the seabed. The current definition was developed when wells were drilled individually and generally connected separately to distinct production platforms. Now, many wells can be drilled and connected to a single production facility from significant distances, because subsea tiebacks are becoming increasingly viable, both technically and economically. Similarly, under the proposed rule, the same principle would apply to any structure or vessel that is connected to a pipeline or which is laying a pipeline.

Second, whereas the existing definition specifies facilities are "used for exploration, development, and production activities," the proposed rule would add "transportation" to this list. This change is intended to make the definition track the language in OCSLA Section 4(a), which includes installations and devices used for the purposes of transporting oil and gas. This change would also reflect the fact the definition now explicitly covers pipelines, which, though they do not themselves normally emit air pollutants, are the means by which vessels that do emit air pollutants are connected to the OCS.

The third change would specify more clearly any equipment directly associated with a facility is considered part of that facility if it is dependent on, or affects the processes of, that facility. The existing definition contains the provision: "During production, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil, gas, or sulphur at a single site." The proposed definition would remove the references to production. Instead it would provide: "All installations, structures, vessels, vehicles, equipment or devices directly associated with the construction, installation, and implementation of a facility are part of a facility while located at the same site, attached, or interconnected by one or more bridges or walkways, or while dependent on, or affecting the processes of, the facility." As a consequence of these changes, mobile sources of emissions would generally be considered part of the facility only while attached to a facility, and not part of the facility otherwise. However, while these mobile sources, such as ice breakers and other support vessels, would not usually be considered part of a facility, and therefore not regulated by BOEM as a facility, their emissions would be accounted for and reported as attributed emissions and would be evaluated to determine whether a proposed plan would cause a potential impact to a State's air quality and could, therefore, trigger a requirement to apply controls in accordance with the requirements of subparts B and C of this part.

Facility Emissions

The proposed rule would define this new term to mean, "for any given criteria or precursor air pollutant, the annual rate, the maximum 12 consecutive month rolling sum, and the peak hourly emissions from all emissions sources on or connected to a facility" (to be consistent with the State permit applications and consistent with the standards for hourly NAAQS, as set by the USEPA). Emissions data required to evaluate compliance with other NAAQS with averaging periods between 1 year and 1 hour, such as the 24-hour PM_{10} and $PM_{2.5}$ NAAQS and the and rolling 3-month Pb NAAQS would be estimated by applying temporal allocation factors to annual emissions modeling, rather than by requiring facilities to also provide emissions information for each of these averaging periods. As described in proposed § 550.205, under the proposed rule, facility emissions along with attributed emissions would constitute projected emissions.

Fugitive Emissions

The proposed rule would define this new term to mean the emissions of an air pollutant from an emissions source that do not pass through a stack, chimney, vent, or other functionally equivalent opening.

Fully Reduce(d)

The proposed rule would define this term to mean "to decrease emissions of VOCs to a rate that will not exceed the emission exemption threshold calculated under subpart C § 550.303(c), or to decrease emissions of criteria air pollutants to a rate that will cause ambient impacts that do not exceed the Significant Impact Levels set out in the table in 40 CFR 51.165(b)(2), as amended."

Long-Term Facility

The proposed rule would define this term to mean a facility that remains at the same general location for three years or longer. Under the current regulations, there is a definition for temporary facility, but no corresponding one for long-term facility. Thus, although the definition is new, the concept underlying the use of this term has been in existence for many years.

There are two notable aspects of the proposed definition. First, the definition would specify a facility located on the same lease block or within one nautical mile of its original location is still considered to be in the same location for purposes of the air quality evaluation. Second, once a facility becomes attached to the sea floor and is used for drilling, production, or transportation, it would be considered to be "in use." The fact it might not be used for the entire year does not mean BOEM should not consider it to be located at a site for the year. For example, under the proposed rule, a facility that is located at a site for three months, then removed and later put back into service at the same location the next year would be considered in use at that location for two years. Likewise, under the proposed rule, a facility that drills on the same block for three months in each of ten years would be considered a long term facility because it is operating at the same location for more than three years; it would not be a short term facility by virtue of the fact it is only physically located in the block for a total of thirty non-contiguous months.

If a facility must move from the location where it first attached to the seabed due to adverse weather or other conditions over which the lessee or operator had no control, the proposed § 550.313(b) would allow the Regional Director to extend the time for which a facility could avoid being classified as a long-term facility by the number of months during which a lessee or operator is unable to operate at that location.

Major Precursor Pollutant

The proposed rule would define this new term to mean any precursor pollutant for which the States are required to report actual emissions to the USEPA, as defined in 40 CFR 51.15(a).

MARPOL-Certified Engine [78]

The proposed rule would define this new term to mean "either: (1) An engine with a power output of more than 5,000 kW and a per cylinder displacement at or above 90 liters installed on a ship constructed on or after 1 January 1990 but prior to 1 January 2000 that is subject to Regulation 13.7 of MARPOL Annex VI; or, (2) an engine with a power output of more than 130 kW built on or after January 1, 2000 that is subject to Regulations 13.1 through 13.6 of MARPOL Annex VI.

According to USEPA, a MARPOL engine operated aboard a U.S. vessel must have a U.S.-issued Enhanced International Air Pollution Prevention for each engine, as well as the relevant Certificate of Compliance from the USEPA.

Maximum Rated Capacity

The proposed rule would define this new term to mean "the maximum power an engine is capable of generating, expressed in kW, and if necessary, as converted from mechanical horsepower (hpm, where 1 hpm of power equals 745.699872 W or 0.745699872 kW) or from the International Table values of British thermal units (BtuIT, where 1 BtuIT/hour of power equals 0.29307107 Watts or 0.00029307107 kW)."

For the purposes of determining whether a proposed facility should be exempt from modeling, the current regulation requires the reporting of projected emissions based on "the maximum rated capacity of the equipment on the proposed drilling unit under its physical and operational design" 30 CFR 550.218(a)(3). Under the proposed rule, this requirement would apply to all engines, not just the drilling unit, because the emission inventory will also include attributed emissions sources (§ 550.205(c) and (d)). The proposed rule, at § 550.205(d)(2)(ii), is aimed at estimating maximum emissions that could occur given the engines that will be used, under any operating constraint proposed by the source. This will involve determining the type of engine operation that produces the highest emissions per hour of operation, which for some pollutants will not be operation at maximum rated capacity. However, even in such a case, information on the maximum rated capacity will be useful for converting "percent of rated capacity" into actual engine loads and therefore emissions, and for generally documenting the types and sizes of engines that will be operating as part of the planned activities.

The proposed definition of maximum rated capacity would specify that that maximum rated capacity must be expressed in kW, or converted from hpm, or British thermal units per hour from the International Tables (BtuIT), since that is the most standard measure for power. In contrast, the term horsepower (hp) has many values, including mechanical hp, electric hp, international hp, metric hp, boiler hp, or water hp. Because there is no standard unit for hp—the range of equivalency is 735.5 watts to 750 watts; BOEM is proposing to use kW instead.

Using kW would facilitate converting measurements and would ensure the use of one consistent standard, International System of Units (SI), in kilowatts. Also, using kW would eliminate the reporting or misreporting of hp based on the many types of hp that can be used for various purposes and, thereby, improve the accuracy of the reports and information submitted to BOEM.[79]

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[78] Note that the USEPA requires that each MARPOL engine installed on a U.S. vessel that operates internationally must have a USEPA-issued Engine International Air Pollution Prevention (EIAPP) certificate as well as the relevant Certificate of Compliance to the applicable CAA standards also issued by the USEPA.

National Ambient Air Quality Standards (NAAQS)

The proposed rule would define this term to mean "the ambient air standards established by the USEPA, as mandated by the CAA (42 U.S.C. 7409), set out in 40 CFR part 50, for the criteria air pollutants considered harmful to public health or welfare when concentrations are elevated over time." The proposed definition would explain that the NAAQS consist of two categories, both of which are included within the defined term: Primary standards that set limits to protect public health, including the health of "sensitive" populations such as asthmatics, children, and the elderly; and secondary standards that set limits to protect public welfare, including protection against visibility impairment, prevention of harm to animals, including marine mammals, fish and other wildlife, and avoidance of damage to crops, vegetation, and buildings.

Non-Attainment Area

The proposed rule would revise the definition that exists in the current regulation to mean, for any given criteria air pollutant, a geographic area, which the Administrator of the USEPA has determined exceeds a primary or secondary NAAQS, as codified at 40 CFR part 81 subpart C. A designated "non-attainment area" is defined in the current rule as, "for any given criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of [US]EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by [US]EPA." This revision is necessary because the existing definition does not clarify that any given area may be designated as an attainment area for one criteria air pollutant and yet be a designated non-attainment area for another criteria air pollutant.

Operational Control(s)

The proposed rule would define this term to mean a process, method, or technique, other than a physical or mechanical control or equipment replacement, that reduces the emissions of criteria or precursor pollutants (*e.g.,* limitation on period of operation, load balancing, use of less-polluting fuels, and/or operating equipment at less than full capacity). Operational control(s) would include, but not be limited to, operating a vessel or facility for a limited number of hours per day, limiting the total amount or type of fuel used over a period of time, load balancing or operating equipment at some level less than full capacity.

Particulate Matter (PM)

The proposed rule would define this new term to mean "an airborne contaminant consisting of particulate matter that is regulated as a criteria air pollutant under the ambient air standards." The proposed rule would explain that PM_{10} refers to airborne contaminants of particulates less than or equal to 10 micrometers. PM_{10} is distinct from coarse PM in that coarse PM consists of particulate matter equal to or less than 10 micrometers but greater than 2.5 micrometers. Further, it would explain $PM_{2.5}$, or fine PM, is an airborne contaminant of particulates less than or equal to a diameter of 2.5 micrometers.

Plan

The proposed rule would add this term to the definitions section to mean "any initial, revised, modified, resubmitted, or supplemental Exploration Plan (EP), or DPP, DOCD, or application for a Right-of-Use and Easement (RUE), a Pipeline ROW, or lease term pipeline." The term "plan" is used throughout proposed § 550.205 and proposed subpart C, and this definition would make explicit it is intended to refer to all plans, regardless of whether a plan is for exploration or development or whether it is an initial plan or a revised, modified, resubmitted, or supplemental plan. For simplicity, where the term plan is used in proposed § 550.205 or proposed subpart C, the specific requirement would be equally applicable to all types of plans.

Potential To Emit

The definition of "potential to emit" is derived from the USEPA regulations at 40 CFR 51.301. In this proposed rule, the term is used in a manner similar to that of the term "facility emissions." Both terms are meant to describe the measure of the maximum potential rather than the actual emissions of a stationary source. In this proposed rule, the term facility emissions is generally used to refer to the emissions of sources regulated under BOEM's AQRP, whereas PTE is used to refer to the emissions of sources not regulated by BOEM.

Potential to emit means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Attributed emissions[80] do not count in determining the PTE of a stationary source.

Precursor Air Pollutant or Precursor Pollutant

The proposed rule would add this new term to mean "a compound that chemically reacts with other atmospheric gases to form a criteria air pollutant." The proposed definition notes some precursor air pollutants are also defined as criteria air pollutants. The proposed definition would also explain precursor air pollutants include VOCs, NO_X, SO_2, and NH_3.

Projected Emissions

The proposed rule would define this new term to mean "for any given criteria or precursor air pollutant, the sum of one facility's emissions and its corresponding attributed emissions over the specified time period, with the controlled or uncontrolled nature of the pollutants specified by the context." Projected emissions include the attributed emissions from offshore vessels and offshore vehicles that support a facility. The individual pollutants included among the projected emissions may be reported on an annual basis or as peak-hour projected emissions, and may be either uncontrolled or controlled and may or may not require the use of BACT, emissions credits, or other ERM from any source(s) as described in § 550.205(e) and (f).

Proximate Activities

The proposed rule would define this term to mean "activities that involve or affect any of the following: The same well(s); a common oil, gas, or sulphur reservoir; the same or adjacent lease block(s); or, facilities located within one nautical mile of one another." The proposed definition would also specify that, where a well is drilled from one facility, but production from the well will ultimately take place through a different facility, the drilling and production activities constitute proximate activities if they occur within the same twelve-month period.

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[79] Units called "horsepower" (hp) have differing definitions: There is mechanical hp, also known as imperial hp, of exactly 550 foot-pounds per second (approximately equivalent to 745.7 watts); metric hp of 75 kg-m per second (approximately equivalent to 735.5 watts or 98.6% of an imperial mechanical hp); boiler hp used for rating steam boilers (equivalent to 34.5 pounds (about 15.6 kg) of water evaporated per hour at 212 degrees Fahrenheit (100 degrees Celsius), or 9809.5 watts); electric motor hp (equal to 746 watts); and British Royal Automobile Club (RAC) hp is one of the tax hp systems adopted around Europe which make an estimate based on several engine dimensions (using a conversion rate of 0.735 kW for 1 hp).

[80] The USEPA refers to attributed emissions as secondary emissions, which it defines in 40 CFR 52.21.

Sensitive Class II Area

The proposed rule would define this new term to mean "a Class II area defined by an FLM agency as being federal land where protection of air resources has been prioritized, as specified in acts, regulations, planning documents, or policy." Agencies with land management responsibility commonly refer to federal land areas that are not Class I areas but are environmentally sensitive as sensitive class II areas. Although the USEPA has not defined different air quality standards or benchmarks for sensitive Class II areas, Federal Land Managers give special attention and subject sensitive Class II area to a more extensive air quality review than would normally be accorded to a typical Class II area. In the context of this rule, an important example of a sensitive Class II area would be the Arctic National Wildlife Refuge in Alaska.

Short-Term Facility

This new proposed term would replace the term "temporary facility" in current § 550.302. The proposed rule would use this new term with a similar but expanded meaning. The proposed definition has been expanded so now any facility that is not a long-term facility or is not connected to such a facility would be considered a short-term facility.

If a facility must move from the location where it first attached to the seabed due to adverse weather or other conditions over which the lessee or operator had no control, the proposed § 550.313 would allow the Regional Director to extend the time for which a facility could be classified as a short-term facility by the number of months during which a lessee or operator is unable to operate at that location.

BOEM recognizes that the USEPA classifies a short-term facility as being a facility that is located at the same location for no more than two years and solicits comments on the implications of retaining or potentially changing this longstanding practice.

Significant Impact Level (SIL), or Significance Level

The proposed rule would define these terms to mean "an ambient air benchmark that applies to the ambient air impact of the emissions of a criteria air pollutant, as set out in the table in 40 CFR. 51.165(b)(2)." The terms "significant impact level" and "significance level" mean the same thing and are interchangeable.

Technically Feasible

The proposed rule would define this new term to mean "a technology or methodology that: (1) Has been demonstrated and operated successfully on the same type of emissions source as the one under review; or (2) is available and applicable to the type of emissions source under review."

BOEM solicits comments on whether the technical feasibility should have to be demonstrated for the particular source identified in the plan or whether the feasibility could be demonstrated through use of similar but different sources.

Total Support Emissions

The proposed rule would define this new term to mean "for any criteria or precursor air pollutant, the total emissions generated by an MSC that operates in support of your and any other facilities, for the 12-month period over which the corresponding facility emissions are measured." Proposed § 550.205(d) would set forth an example for calculating total support emissions.

Section 550.303—What analysis of my projected emissions is required under this subpart?

Section 550.303(a)—Establishing Emission Exemption Thresholds

BOEM establishes emission exemption thresholds (EETs). BOEM would define EETs as the maximum allowable rate of projected emissions, calculated for each air pollutant, above which facilities would be subject to the requirement to perform modeling. These EETs would establish those levels of consolidated emissions below which BOEM has determined would not cause or contribute to a violation of the NAAQS.

The proposed rule would provide that, if projected emissions or complex total emissions are exempt, then the lessee or operator would not be required to perform air quality modeling in accordance with the requirements of proposed § 550.304 of this subpart and to apply any controls, as described in proposed §§ 550.305 through 550.307.

Paragraph 550.303(b)—Calculating Projected Emissions

These paragraphs would establish the requirement that a lessee or operator must compare its projected emissions or its complex total emissions with the applicable EETs. More detailed requirements for calculating and reporting projected emissions, facility emissions, and attributed emissions are set forth in proposed § 550.205 and explained in the preamble discussion regarding that provision.

Paragraph 550.303(c)—Emission Exemption Threshold(s)

Under the proposed rule, BOEM would determine whether the lessee or operator's projected emissions or complex total emissions have the potential to significantly affect the air quality of any State, in accordance with the EETs calculated under this proposed paragraph. This paragraph would provide that BOEM will, sometime after the rule is finalized, publish updated EETs in the **Federal Register**. These thresholds would be based on criteria proposed in this rule and would fall within a range proposed in this rule. Under the proposed rule, until such time as BOEM has published these new EETs in the FR (herein referred to as the date of the Notice)[81] and has solicited public comment thereon, a lessee or operator's projected emissions or complex total emissions would be exempt if its projected emissions or complex total emissions are below the EETs set in the current regulation at § 550.303(d). During this period, the distance variable in these formulas would continue to be the shortest distance of the facility to the shoreline, as is the case under the current rule. The proposed rule would require BOEM to provide notice of proposed EETs in the FR, and an opportunity to comment on them, any time it subsequently issues new EETs or revises existing ones.

The proposed rule would establish the process BOEM would follow to provide notice of proposed EETs in the FR, and an opportunity to comment on them, any time it subsequently issues new EETs or revises existing ones. BOEM anticipates that it would establish new EETs based on the EET studies currently underway and would publish these in the FR after the completion of the studies (estimated in 2020). BOEM would then require that all future plans be evaluated in terms of their effects on the air quality of neighboring States by considering the impacts landward of the SSB (including the air above the State's submerged lands, at the shoreline and inland of the shoreline). New EETs for those pollutants added to this proposed rule will not be established until such time as the relevant studies have been completed.

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[81] Estimated to take place in 2020.

Section 550.303(c)(2) of the proposed rule provides criteria that BOEM would use to determine the formulas that BOEM would publish in the FR. These include: The absolute level of projected emissions; the distance of the proposed facility or facilities from any State or from critical natural resources, animals, and habitats; the existing ambient air pollution in potentially affected States; the trend in the ambient air pollution in those States; the associated attainment status of such areas and the associated effects to public health and welfare; any USEPA AAQSB applied by this proposed rule; the types, frequency and duration of any air pollutant emissions and their formation and/or dispersion characteristics; the characteristics of the facility or facilities and MSCs, including the type and nature of the emissions sources, and the height of the associated emission points or stacks; the prevailing meteorological characteristics in any given area, including air stability, relevant wind speeds and directions; the amount of emissions from existing facilities and vessels in the vicinity of the proposed facility; and other necessary and appropriate conditions. Several of these criteria (used to determine the EETs) are localized and may differ according to area even within one OCS region (*e.g.*, prevailing meteorological characteristics and the amount of emissions from existing facilities and vessels in the vicinity). Accordingly, BOEM expects that the EETs it would set in the FR would vary from area to area. This could result in different sets of formulas for each planning area or smaller geographic unit.

The proposed rule also would establish a range within which these new EET formulas will apply. Above this range, lessees and operators would always be required to perform air quality modeling, in accordance with the requirements of § 550.304 of this subpart, or to apply controls, as described in §§ 550.305 through 550.307, and below this range lessees and operators would not be required to do so. Within this range, lessees and operators would be exempt from these requirements only if their projected or complex total emissions were below the EETs defined by the formulas BOEM will publish in the FR.

Proposed § 550.303(c)(3)(ii) would set the upper boundary of this range. The proposed subparagraph would set the upper bounds of this range with the current EET formulas (currently codified at 30 CFR 550.303(d)). However, the distance variable in the formulas would be measured from the closest point on the SSB.[82] Because this feature of the upper boundary formulas would allow the upper boundary to vary all the way down to zero (when the distance is zero), BOEM is proposing to set constant values for the EETs for facilities within the first three nautical miles of the State's seaward boundary. These proposed values would be based on the current values of the current emission exemption formulas at the SSB, and, for all pollutants other than CO, they would correspond to the 100 tpy major source criteria from the USEPA NSR permitting program, as defined in its regulations at 40 CFR part 70.[83] Chart II, below, depicts how the current thresholds would shift to become the upper boundaries of the range once BOEM publishes the future thresholds in the **Federal Register**. The highest series represents the current thresholds, while the two lower series represent the EETs that would apply to those States with three and nine nautical mile State submerged land boundaries, respectively.

At the present time, BOEM does not have EETs for Pb, $PM_{2.5}$, or PM_{10}, nor has it established EETs that would apply to anything other than the projected annual emissions. Until such time as EETs are established for these pollutants, no plan would be required to model on the basis of their emissions of these pollutants alone (except for Pb, for which the proposed rule would set an EET which could trigger a requirement for modeling).

BOEM recognizes there may be a more appropriate distance-adjusted maximum emission exemption threshold for these pollutants and solicits comments from stakeholders on what they should be. Any comments should include an analysis of the reasoning used to support an alternative threshold, keeping in mind that the key goal is to ensure that offshore projected emissions of Pb, $PM_{2.5}$, or PM_{10} do not "cause or contribute to a violation" of their corresponding NAAQS.

Proposed § 550.303(c)(3)(i) would set the lower boundary of this range. The proposed formulas for these minimums represent emissions levels below which the ambient air impact at the nearest point in a State would not exceed any annual SIL. To derive these equations BOEM used a Gaussian dispersion equation, setting the concentration variable of the equation equal to a SIL and solving for the corresponding emissions rate. An example of the theoretical model underlying this analysis is provided for illustration purposes below:[84]

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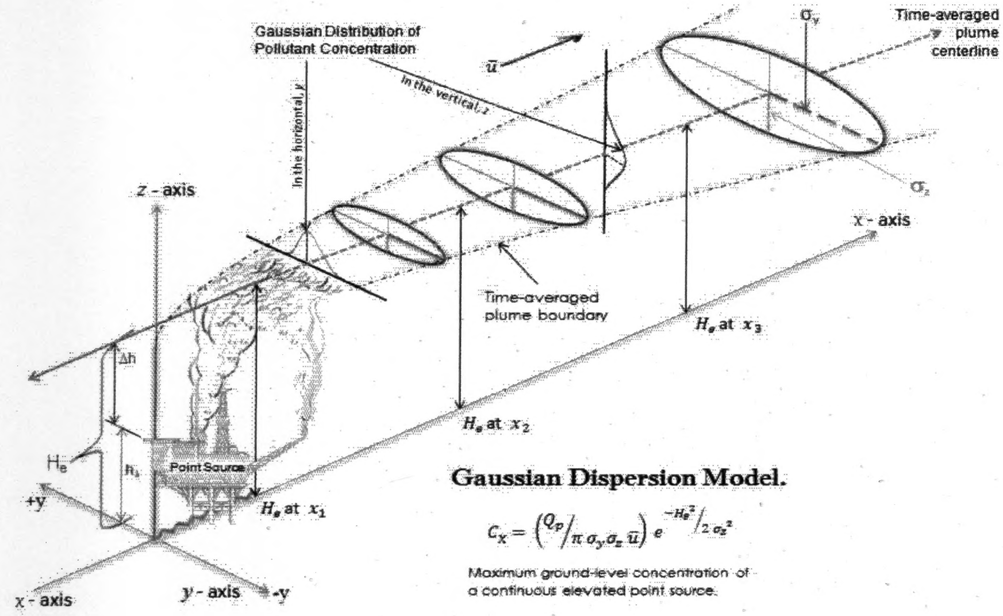
[82] Because these same formulas would also serve as the EETs during the period after the rule is finalized and before the new formulas are established in the FR, subparagraph (4)(i) sets forth the same formulas as (4)(ii) but defines the distance variable as the distance from the shoreline.

[83] The USEPA has two thresholds used to determine what constitutes a major source for purposes of its permitting program. In addition to the 28 source categories for which the 100 tpy threshold applies, the USEPA has a 250 tpy threshold that applies to other source categories. BOEM's existing exemption thresholds were originally based on the 100 tpy standard and BOEM has elected to retain this as the criteria, since it is a more conservative approach.

[84] BOEM Alaska OCS Region, 2015, Chukchi Sea Planning Area Oil and Gas Lease Sale 193 in the Chukchi Sea, Alaska Final Second Supplemental Environmental Impact Statement BOEM 2014–669.

Chart I: Gaussian Dispersion Model:


Gaussian Distribution of Pollutant Concentration
$\bar{u}$
σ_y
Time-averaged plume centerline
In the horizontal, y
In the vertical, z
z - axis
σ_z
x - axis
Time-averaged plume boundary
H_e at x_3
Δh
H_e at x_2
H_e
h_s
Point Source
+y
H_e at x_1
χ - axis
y - axis
-y

Gaussian Dispersion Model.

$$C_\chi = \left(Q_p / \pi\, \sigma_y \sigma_z\, \bar{u}\right) e^{-H_e^2 / 2\,\sigma_z^2}$$

Maximum ground-level concentration of a continuous elevated point source.

Adapted from :
Beychok, M.R., *Fundamentals of Stack Gas Dispersion*, 4th Ed., 2005; Abdel-Rahman, A. A. *On the Atmospheric Dispersion and Gaussian Plume Model*, 2008; and Arya, S. P. 1999. *Air Pollution Meteorology and Dispersion*. Sec. 9.6 "The Maximum Ground-Level Concentration."

C_χ	Maximum pollutant concentration in micrograms per cubic meter, $\left({}^{g}/_{m^3}\right)$, at a point, χ
Q_p	Emission rate of a polluant, p, in grams per second $\left({}^{g}/_{s}\right)$
π	Pi, a value of approximately 3.14, where Pi has no units
e	Natural exponential function, no units, where $e^1 = 2.718$, $e^0 = 1$, and $\ln x = 1/e^{\chi}$
H	Actual stack height, expressed in meters (m)
Δh	Extent of plume rise above the stack at release due to heat bouyancy, where without bouyancy, $\Delta h = 0\ m$
H_e	Effective stack height at a point, χ, expressed in m, where, $h_s + \Delta h = H_e$ at $\chi=0$, and where $(H_e \text{ at } \chi_1) > (H_e \text{ at } \chi_2) > (H_e \text{ at } \chi_3)$
$\bar{u}$	Mean surface wind speed in the direction of the χ-axis, averaged over a 10-minute period, recorded at a height 10 m above the observation surface in miles per hour (mph), and converted to meters per second (m/s)
σ_z	Vertical dispersion coefficient, distance of plume's vertical expansion below the centerline expressed in m
σ_y	Horizontal dispersion coefficient, distance of plume's horizontal expansion outward from the centerline, expressed in m

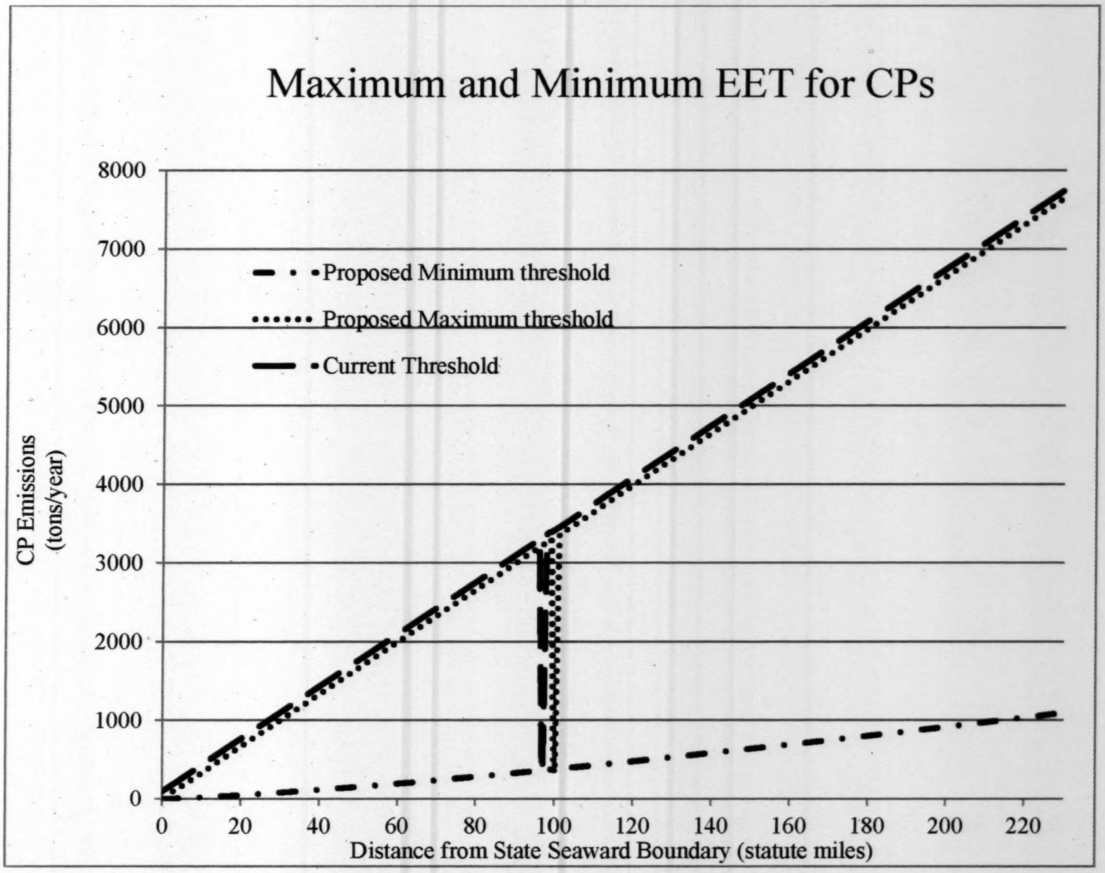
In deriving these equations BOEM used conservative assumptions regarding the wind speed, stack height and air stability. For a full description of the method used to derive these equations see the Appendix: BOEM Analysis of Minimum Emission Exemption Thresholds available in the rulemaking docket at *www.regulations.gov.*

If you have questions concerning the analysis done regarding the formulas or analysis related to the minimum emission exemption thresholds, you may contact Virginia Raps of the BOEM Alaska OCS Regional Office, by mail at the Bureau of Ocean Energy Management, Alaska OCS Region, 3801

Centerpoint Drive, Suite 500, Anchorage, AK 99503, or by email at *Virginia.Raps@boem.gov*, or by phone at (907) 334–5200.

The following chart illustrates the proposed emission exemption thresholds for NO_X. It shows the current exemption threshold, the proposed maximum exemption threshold, and the proposed minimum exemption threshold for NO_X. The chart shows that the proposed maximum threshold would have the same slope as the current threshold but would shift slightly lower due to proposed rule's changing the "distance" variable to be measured from the SSB. The space in-between the proposed maximum and the proposed minimum represents the range where BOEM would apply the formulas it will publish in the **Federal Register**.

Chart II: Maximum and Minimum EET for Criteria Pollutants[85]



Section 550.303(c)(3)(i) lists the formulas for the proposed new minimum emission exemption thresholds for those CPs for which the USEPA has established SILs. Paragraph 303(c)(ii) would include a minimum emission exemption threshold for Pb. To establish a minimum emissions exemption level for Pb, the proposed rule would adopt the USEPA significant emissions rate for Pb, as described in USEPA regulations at 40 CFR 52.21(b)(23)(i). This amount is currently set at 0.6 short tons of emissions per year. BOEM is proposing this addition in order to ensure consistency with USEPA regulations and to ensure all OCS facilities comply with the requirements of OCSLA. BOEM is not proposing to establish a distance-based formula for Pb because the USEPA has not established SILs for Pb which would enable BOEM to apply the above methodology. Instead, BOEM is proposing to utilize the USEPA's significant emissions rate for Pb as an emissions threshold.

As an alternative to the proposed distance-based formula, BOEM is also considering an option in which it would establish new minimum EETs based on the PSD emissions limits in the USEPA's regulations at 40 CFR 52.21(b)(23)(i). Those USEPA tables are intended primarily to determine whether a facility will generate potentially significant incremental increases in pollutant concentrations in the area surrounding the proposed emissions source. BOEM could either apply the current absolute numbers or utilize the values in the USEPA table and adjust them, on either a linear basis or on the basis of a Gaussian dispersion equation, in an appropriate manner based on the distance of the facility from the State.

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[85] This chart would apply to all CPs other than CO, ozone and lead.

BOEM solicits comments on this and other possible alternative approaches to establishing new maximum EETs (above which all plans would be subject to modeling) and minimum EETs (below which BOEM would not establish any new EETs).[86] Such a discussion would ideally include information both on the levels of the two sets of formulas, as well as on the type and nature of the formulas that should be applied.

Finally, because the NAAQS are subject to change as scientific knowledge improves and because technical and modeling capabilities may improve over time, the proposed rule provides that BOEM, at its discretion, would revise the emission exemption thresholds on an ongoing basis either as a result of a change in an applicable standard or because BOEM's ability to measure and evaluate the impact of existing emission exemption thresholds has improved or for some other reason. Thus, under the proposed rule, if the USEPA revises the NAAQS, or any applicable SIL or AAI, BOEM would examine the appropriateness of its emission exemption thresholds, and, BOEM, at its discretion, could periodically revise its exemption formula(s) or its exemption threshold amount(s) for the corresponding air pollutant(s), as appropriate.

Paragraph 550.303(d)—Consolidation of Air Pollutant Emissions From Multiple Facilities

The purpose of this section is to determine whether two or more facilities wholly or partially owned, controlled or operated by the same entity that are located in relatively close proximity may collectively cause or contribute to a violation of any relevant air quality standard or benchmark, even if they would not do so when considered on a separate basis.

The proposed rule would require projected emissions from multiple facilities under common ownership to be combined for analysis and reported as complex total emissions under certain circumstances. BOEM's current practice is to require, in specific circumstances, the consolidated analysis of facilities covered by multiple plans in accordance with the following provision of § 550.303(j): "If, during the review of a new, modified, or revised Exploration Plan or Development and Production Plan, the Regional Supervisor determines or an affected State submits information to the Regional Supervisor which demonstrates, in the judgment of the Regional Supervisor, that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether emission control measures are necessary." The current regulations do not specify under what circumstances the Regional Supervisor would make such a determination.

This proposed paragraph recognizes the fact that emissions from two or more OCS facilities located in close proximity to one another may have an impact on the air quality of a State, when operated contemporaneously, even in those situations where the emissions from any one of those facilities, when compared against the emission exemption thresholds, would indicate that that facility should not cause an adverse impact to the air quality of a State. Closely-grouped facilities that emit pollutants at the same time can affect the air quality of a State differently than facilities that are spread across a larger area. The proposed rule would require a lessee or operator to add together its projected emissions with the emissions from other facilities whether or not they are described in lessee or operator's plan and whether they currently exist or are proposed.

The proposed paragraph would specify the conditions under which a lessee or operator would be required to consolidate the projected emissions from multiple facilities. Under the proposed rule, projected emissions from multiple facilities would be required to be consolidated if: (1) The emissions from multiple facilities are generated by proximate activities (*i.e.,* the same well(s); a common oil, gas, or sulphur reservoir; the same or adjacent lease block(s); or, by facilities located within one nautical mile of one another); (2) the lessee or operator wholly or partially owns, controls or operates those facilities; (3) the construction, installation, drilling, operation, or decommissioning of any of the lessee or operator's facilities occurs within the same 12-month period as the construction, installation, operation, or decommissioning of another facility that meets conditions 1 and 2; and (4) such a consolidation of emissions from multiple facilities would generate emissions sufficient to exceed an applicable emission exemption threshold.

If any two or more facilities meet all of the conditions specified in paragraphs (d)(1)(i) through (iv) of this proposed section the lessee or operator would be required to calculate the sum of the projected emissions from those facilities (including its respective attributed emissions), as the complex total emissions for its plan.

If there are two or more facilities that would normally be submitted in one plan, and which are intended to be part of one unit or project, those facilities should be evaluated together. This requirement is intended to discourage submission of multiple plans for the purpose of remaining under the exemption thresholds. This requirement would be applied only to facilities that are wholly or partially owned, controlled or operated by the same party. This limitation is intended to further ensure that the associated air quality analysis would be applied consistently across projects, regardless of whether a lessee's or operator's project is submitted for approval in one plan or whether it submits several plans separately.

According to BOEM regulations (in § 550.105), a lessee is defined as being "a person who has entered into a lease with the United States to explore for, develop, and produce the leased minerals. The term lessee also includes the BOEM-approved assignee of the lease, and the BOEM-approved sublessee of operating rights in the lease." The definition of "you" includes a "lessee, the owner or holder of operating rights, a designated operator or agent of the lessee(s), a pipeline ROW holder, or a State lessee granted a right of use and easement." Thus, the requirement for common ownership of a facility would extend to the lessee or their assignee as well as to those that share other lease interests, including joint ownership in a common unit, joint operating rights interests, as well as companies that use the same designated operator or unit operator for those facilities located in the same general vicinity of the proposed new facility.

In order to determine common ownership, BOEM will rely on the criteria defined by the Office of Natural Resources Revenue (ONRR) for evaluating whether or not two companies should be considered affiliates, as defined in the regulations at 30 CFR 1206.101 and 30 CFR 1206.151. BOEM solicits comments from lessees and operators with respect to how it could most effectively limit the application of these consolidation criteria to relevant parties and avoid the consolidation of emissions associated with facilities that are operated by unaffiliated companies.

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[86] With the adoption of the new EETs, there would be no need for any lessee or operator to review or evaluate their emissions as compared to the minimum thresholds because those minimums will, in all cases, be below the EETs.

Facilities whose projected emissions would have been consolidated but for the exemption related to ownership and control would still be evaluated for their consolidated effects to the States outside of the AQRP. BOEM will conduct independent studies regarding the consolidated effects of multiple facilities on the air quality of the neighboring States and will also evaluate the potential for future cumulative impacts in conjunction with the associated NEPA review of the Five-Year Oil and Gas Leasing Program, the associated lease sales and the lease sale EISs.

The proposed paragraph would also specify that if all of the emissions to be combined relate to the lessee's or operator's wholly-owned facilities, then the lessee or operator would be required to provide the data and analysis regarding the complex total emissions. However, where the lessee or operator does not fully own all of the facilities whose projected emissions are to be consolidated, the lessee or operator would need to gather data either from the operator of any facilities that it does not wholly own or which it does not operate, or from the publically available database of plans approved by BOEM, and would need to provide all the data and analysis it gathered. BOEM would make a determination whether the lessee or operator has appropriately considered the relevant data in its analysis of the complex total emissions. If all of the emissions to be combined relate to the lessee or operator's wholly-owned facilities, that lessee or operator must provide all the data and analysis of the complex total emissions.

Under the proposed rule, if any lessee or operator were required to consolidate projected emissions data from multiple facilities, then anywhere a proposed requirement is written to apply to projected emissions that proposed requirement would instead apply to complex total emissions, except with respect to the process by which projected emissions are determined for any given facility (as specified in § 550.205(c), (d), and (e)).

Paragraphs 550.303(e) and (f)—Emissions Do Not Exceed any Threshold or Exceed a Threshold

The purpose of these two paragraphs is to determine whether the facility or facilities covered by a proposed plan should be required to do modeling to determine whether, or to what extent, its operations might adversely affect the air quality of a State. If a plan is proposed that would result in operations such that none of the EETs would be exceeded, then the plan would not be required to include air quality modeling. This is because BOEM would already have determined that the potential effects resulting from the implementation of that plan would not have the potential to cause any such adverse effect.

Under the proposed § 550.303(e), if none of a plan's projected emissions or complex total emissions for any precursor or CP that exceeds the applicable emission exemption threshold, then its projected emissions would be considered *de minimis,* and therefore exempt, so that no further analysis would be required under subpart C.

Under the proposed § 550.303(f), if a lessee's or operator's projected emissions or complex total emissions of the precursor or criteria air pollutant exceed the applicable emission exemption threshold, then further review would be required and potentially also controls. Under the proposed rule, the requirements associated with an exceedance would depend on which pollutant or pollutants exceed the threshold(s). If emissions of VOCs, which have no SILs, exceed a threshold, then controls would be required pursuant to proposed § 550.306 or 550.307, depending on whether the facility is short-term or long-term. If emissions of a criteria air pollutant exceed a threshold, then modeling would be required under proposed section 550.304. The current rule accounts for both of these two scenarios, just as the proposed rule would.

The proposed rule would add provisions specifying circumstances in which additional photochemical modeling would be required. One of these proposed provisions would require photochemical modeling of O_3 when projected emissions exceed the applicable emission exemption threshold for the O_3 precursors NO_X, VOCs, or CO. A second new proposed provision would require photochemical modeling for $PM_{2.5}$ if a plan's projected emissions of the $PM_{2.5}$ precursors, NO_X, VOCs, $PM_{2.5}$, or SO_2, exceed the applicable emission exemption threshold. In both cases, the proposed rule would not impose these photochemical modeling requirements, until such time as the conditions specified in § 550.304(b) have been met.

Paragraph 550.303(g)—Changes to Previously Approved Plans

The proposed rule would set requirements specifying when lessees and operators must submit revisions to their plans based on changes to how the plan will be implemented. The first proposed paragraph, (g)(1), would provide that, if a lessee or operator changes its plan implementation, such that its projected emissions would occur in years other than those that were previously approved, it would be required to submit a new plan and obtain approval before it implements the proposed changes. This requirement would relate to when operations occur, not the level of emissions associated with those operations.

This proposed provision would formalize an existing practice whereby a lessee or operator is required to submit a new plan if the actual emissions associated with its operations will likely occur in years other than those proposed and approved in the original plan. Depending on the timing of the prospective emissions, the air impacts of those emissions would vary due to other activities in the area and to seasonal effects. For future years, the NAAQS or air quality benchmarks may change. In addition, the complex total emissions analysis may need to be redone or reevaluated.

The second proposed paragraph, (g)(2), would provide that, if a lessee or operator anticipates any increase in the maximum air pollutant emissions above that projected for any time period described in the previously approved plan, the lessee or operator would be required to submit a new plan, pursuant to 30 CFR 550.283(a)(4). That existing section provides that an operator must submit a revised plan if it proposes to increase the emissions of an air pollutant to an amount that exceeds the amount specified in the approved plan. The proposed provision would relate to the peak emissions that would be generated by the facility, including its attributed emissions, for any time period (annual, 12-month rolling sum or maximum hourly) during its OCS operations.

The third proposed paragraph, (g)(3), would provide that, if a lessee or operator proposes to make a change to operations on its existing facility or facilities, but not to the equipment used in such operations, such that its approved projected annual emissions in any given year are higher than those previously approved for the particular year, but lower than the maximum air pollutant emissions for any year, the lessee or operator would not need to submit a revised plan—as long as the operations would occur in the same year as described in the previous plan.

The fourth proposed paragraph, (g)(4), would require that a lessee or operator submit a new plan any time it proposes to change any equipment on its existing facility or facilities such that the proposed change would result in an increase in air pollutant emissions from that specific equipment for any air pollutant, regardless of the impact on the total emissions of the facility as a whole.

The fifth proposed paragraph, (g)(5), would specify if a plan was approved for a short-term facility and it was determined later that the facility would be used in such a manner that it would properly be classified as a long-term facility, then a new plan must be submitted for review and approval by BOEM.

Paragraph 550.303(h)—Federal Land Manager

BOEM currently consults with appropriate FLMs when it has reason to believe a lessee's or operator's proposed OCS activities could potentially cause a significant effect on air quality in a Class I area. Under the current practice, BOEM occasionally asks lessees and operators to submit additional information to show their proposed activities would not significantly affect the air quality of such areas.

The proposed rule would expressly provide that BOEM may consult with one or more relevant FLMs if it believes emissions from proposed activities could potentially have a significant effect on Class I areas or sensitive Class II areas onshore or above State submerged lands. It would further provide that BOEM would consider the views of the FLMs in determining whether the proposed plan complies with the provisions of proposed subpart C. Based on this consultation, BOEM might require additional information and analysis, either prior to or as a condition of approving the plan. Finally, it would state that, if the FLM does not raise any concerns regarding the plan in a timely manner, BOEM would assume the FLM has no objections to the plan.

Under current practice and the proposed rule, the FLMs would independently evaluate the potential impacts of air pollutant emissions from OCS activities because of their expertise, modeling and evaluation skills. They have the unique ability to evaluate and determine the likely impacts of OCS activities on Class I and sensitive Class II areas.

Section 550.304—What must I do if my projected emissions exceed an emission exemption threshold?

Paragraph 550.304(a)—Dispersion Models

Paragraph 550.304(a) of the proposed rule describes BOEM's proposed dispersion modeling requirements, which would apply in the event the lessee or operator's projected emissions or complex total emission exceed the limits defined in § 550.303(c). Dispersion modeling shows how a pollutant that is emitted could affect the concentrations of that pollutant onshore or above State submerged lands. BOEM has determined air pollutant emissions could potentially affect a State only under those circumstances where the total annual projected emissions or the complex total emissions of any given pollutant exceed a relevant exemption threshold. For this reason, a lessee or operator must perform modeling to estimate the projected increase in the ambient concentration of a pollutant onshore only if its proposed plan proposes projected emissions that exceed an emission exemption threshold for one or more criteria air pollutants.

The proposed rule would clarify that if a lessee or operator's projected emissions, or complex total emissions, of any given criteria or precursor pollutant exceeds an emission exemption threshold, then the lessee or operator would be required to model the potential impact of those emissions and those of any other pollutant for which the exceeding pollutant is a precursor, in order to determine the potential impact to the State. However, the rule would not require that a lessee or operator perform modeling with respect to those pollutants whose emissions are not projected to exceed any relevant EET. This approach is similar to that taken by the USEPA and is done for the same reason, namely to ensure that emissions are modeled in situations where a potential impact may occur. The USEPA method relies on the use of its SERs to make this determination, rather than requiring modeling, however.[87] In addition, the proposed rule would make it explicit that modeling must be based on the projected emissions reported under § 550.205(e), or the complex total emissions, whichever is applicable.

This approach relies on the presumption that there would be one EET applicable at any given location for each precursor or CP. As an alternative, BOEM could establish multiple EETs for any given pollutant in those situations, such as for NOX, where the same pollutant is both a CP and a precursor for another CP. In this latter case, BOEM would not require modeling of any pollutant except in the case that that pollutant exceeded a relevant EET.

The proposed rule would provide that a lessee or operator must use one or more of the following air dispersion models: An air dispersion model listed in appendix A to appendix W to 40 CFR part 51; an air dispersion model listed in the Federal Land Managers' Air Quality Related Values Workgroup Guidance; or another model approved by the BOEM Chief Environmental Officer. The lessee or operator would also be required to follow the modeling procedures recommended in 40 CFR part 51 appendix W, as amended, to the extent possible. A lessee or operator would be required to provide BOEM with a copy of its dispersion modeling protocol and the associated data and assumptions used to do its analysis before it conducts such modeling.

Paragraph 550.304(b)—Photochemical Models

The proposed rule would require both dispersion and photochemical modeling, under a limited number of circumstances. For air photochemical modeling, the proposed paragraph (b) would also require lessees and operators use a model approved by the BOEM CEO and follow the modeling guideline provided in 40 CFR part 51 appendix W, as amended, to the extent possible. BOEM does not anticipate implementing a requirement for lessees and operators to conduct single source photochemical modeling for plan facilities until such time as it has determined that this modeling would be reasonable and practical for such lessees and operators, taking into consideration both the technical feasibility and the costs.

The proposed rule in § 550.304(b) describes BOEM's proposed photochemical modeling requirements.[88] Photochemical

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[87] In USEPA's case, any proposed facility that has been identified as a major source of emissions for any given pollutant must then be evaluated to determine whether that facility would generate emissions in excess of the Significant Emissions Rate (SER) for every other air pollutant. BOEM's EETs are designed to accomplish a similar purpose, namely to identify situations where a proposed facility's emissions may be potentially significant.

[88] This section indicates that a photochemical model will be used under certain circumstances so long as it can be approved as an alternative model under Section 3.2 of Appendix W. This is similar to what the USEPA is proposing to do, in that the USEPA's proposed revisions to Appendix W do not solely rely upon explicit use of photochemical

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modeling shows the concentration increase onshore of an air pollutant that is formed as a result of photochemical processes in the atmosphere. Photochemical modeling would be required only if: (1) The projected emissions for the relevant precursor air pollutants exceed the applicable emission exemption threshold; (2) an appropriate photochemical air quality model is available that either meets the USEPA's requirements in section 3.2 of 40 CFR part 51, appendix W, or complies with the FLM's modeling guidance, or has been approved by BOEM's CEO; and (3) BOEM has determined that adequate relevant information on background concentrations is available for the relevant location(s) in a potentially affected State. The proposed rule would require lessees and operators provide BOEM, upon request, with a copy of the photochemical modeling protocol and the associated data and assumptions used to perform the photochemical analysis before the actual modeling is conducted.

The USEPA is currently evaluating the feasibility of establishing and requiring single source photochemical modeling, something that was technically challenging and generally cost prohibitive in the past. BOEM is reviewing the USEPA's work in this area. Once BOEM has determined that the appropriate models are available, photochemical modeling may be done cost effectively, and the relevant background concentration data are available, BOEM will consider approving model(s) for use under this proposed section. Modeling protocols and the regional exemption studies supporting the EETs will likely allow BOEM to approve a photochemical model in the year 2020.

In order to make a determination as to the appropriate circumstances under which single source photochemical models should be required, BOEM must also establish appropriate EETs as the screening mechanism. BOEM may develop EETs specific to O_3 and $PM_{2.5}$ formation, either in addition to or in lieu of specific SERs or EETs, or utilize reduced form photochemical models as a screening tool to determine the circumstances under which full single source photochemical modeling may be required.[89] BOEM might consider current and future USEPA regulatory models, assessment techniques, and related guidance to develop EETs specific to O_3 and $PM_{2.5}$ formation.

Paragraph 550.304(c)—Projected Emissions

Section 550.304(c) of the proposed rule would require the lessee or operator to base its modeling on its maximum projected emissions, as reported under § 550.205(e), or on the complex total emissions in those situations where that reporting is otherwise required.

Paragraph 550.304(d)—Meteorology

Section 550.304(d) of the proposed rule would require, that for any modeling performed, lessees and operators must apply the best available and most recent meteorological dataset(s), either as directed in 40 CFR part 51 appendix W, or by using an alternate dataset(s) approved by the Regional Supervisor. In addition, the proposed rule would require lessees and operators to create a modeling report documenting all emissions sources, inputs, parameters, assumptions, procedures, methods, and results including input and output files, and data upon which their analyses under subpart C would be based, and to provide BOEM with copies of all data and access to any programs used in their modeling.

Paragraph 550.304(e)—Estimates of Ambient Air Concentrations

The proposed rule would specify in § 550.304(e) that, for each criteria air pollutant resulting from your projected emissions (or complex total emissions where applicable), the lessee and operator must estimate the peak incremental concentrations projected in any attainment area(s) and, separately, in any non-attainment area(s), in any State, including State submerged lands and onshore. BOEM is proposing this new requirement because the highest air pollutant concentration on the onshore area of a State may or may not occur at the onshore area that is closest to the facility described in the plan. Depending on the meteorology of the OCS region, the maximum concentration will likely occur at that point on the shoreline or above State submerged lands where the emissions are directed by the prevailing winds. The distinction between the peak attainment and peak non-attainment areas is important because the evaluation and ERM criteria are different for impacts to these two kinds of areas.

Section 550.304(e) would require, to the extent practicable, estimates of the ambient air concentrations of any criteria air pollutant consider not only the dispersion of each criteria air pollutant itself, but also the formation of any criteria air pollutant that may result from the dispersion or presence of any relevant precursor air pollutant(s). The proposed rule would state specifically which precursors would be required to be included in the analysis of $PM_{2.5}$ and O_3.

The proposed rule would also state that BOEM may provide information through Notices to Lessees to assist lessees and operators in evaluating existing ambient air concentrations, or changes in such concentrations over time, if BOEM determines that there is an effective means of estimating ambient air quality. Under the proposal, if BOEM has determined that there is an effective means of estimating ambient air quality and BOEM has established appropriate background concentration data for any given pollutant, at any given location and point in time, a lessee or operator would be required to use the relevant data provided by BOEM. Alternatively, in the event that BOEM has not determined appropriate background concentration data for any given pollutant, for any given location, and point in time, a lessee or operator would be required to use the relevant data from the USEPA for the closest appropriate location, as specified by the Regional Supervisor.

Paragraph 550.304(f)—Attributed Emissions

Section 550.304(f) would require that, for the purpose of calculating the relevant attributed emissions, lessees and operators conduct modeling of attributed emissions from those locations where those emissions are most likely to occur, utilizing the most appropriate line, area, volume, or pseudo point source model that would most accurately estimate the actual emissions that will result from MSCs, or other support operations. Under the current practice, in contrast, modeling is performed on the assumption that all

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models for each permit situation. Rather, EPA has a tiered approach with a first tier that uses existing information or reduced form models in lieu of full photochemical modeling.

[89] BOEM is considering chemical transport models, including Lagrangian puff models and Eulerian grid (*e.g.,* photochemical transport) models, as well. Lagrangian puff models would require a realistic chemical environment for input, whereas photochemical transport models typically estimate a realistic chemical environment. Even though single source emissions are injected into a grid volume, comparisons with in-plume measurements indicate these types of models can capture downwind secondary pollutant impacts when applied appropriately for this purpose. Single source impacts estimated by photochemical grid models can be done by comparing a (1) model simulation with all sources and the project source at preconstruction levels and (2) model simulation with all sources and the project source at post-construction levels. Alternatively, post-construction emissions could be tracked with photochemical grid model source apportionment or source sensitivity model extensions.

attributed emissions originate at the same location as that of a single stationary facility.

Paragraph 550.304(g)—Documentation and Reporting

The proposed rule in § 550.304(g) would require the lessee or operator to create a modeling report documenting all emissions sources, inputs, parameters, assumptions, procedures, methods, and results, including input and output files, and underlying data upon which its analysis under this subpart is based. The rule would require the lessee or operator provide BOEM with copies of the modeling report, copies of all relevant data and the lessee or operator provide access to any programs used to perform their modeling.

Section 550.305—How do I determine whether my projected emissions of criteria air pollutants require ERM?

The proposed rule would require lessees and operators to compare the results of the modeling conducted under proposed § 550.304 with the USEPA's Significant Impact Levels (SILs). If the modeling results are higher than the SILs, ERM would be required as specified in § 550.306, for a short-term facility, or as specified in § 550.307, for a long-term facility. Under current BOEM regulations, if modeling indicates an exceedance of the SILs, which the current regulations refer to as Significance Levels, this triggers the requirement to apply BACT. The table of Significance Levels in current § 550.303(e) was based on the table of the USEPA's SILs as they existed in 1980. The USEPA's tables, however, have been updated since then.

The USEPA's regulation on SILs, at 40 CFR 51.165(b), states that an emissions source "will be considered to cause or contribute to a violation of a national ambient air quality standard" when such a source would cause an exceedance of the SILs. Accordingly, BOEM is proposing to use the SILs to set the level of projected air pollution increase at a measurement point either onshore or above State submerged lands, that, if exceeded, ERM may be evaluated and controls may be required. BOEM is proposing to cross-reference the USEPA's table of SILs so, if there is an update or addition that results in a change to the USEPA table, that change would automatically become incorporated into BOEM's regulatory standards.

Since $PM_{2.5}$ is both emitted and formed in the atmosphere, lessees and operators would be required to add the results of their air dispersion modeling for direct $PM_{2.5}$ emissions to the results of their photochemical modeling, if required under proposed section 550.304, before comparing the results with the $PM_{2.5}$ SILs. If the resulting sum exceeds a SIL for $PM_{2.5}$ for any averaging time, the operator would be required to apply ERM. As set out in proposed section 550.304 and explained above, this additional modeling for $PM_{2.5}$ would only be required if the relevant photochemical models and background concentration are available.

In contrast to the other criteria air pollutants, the USEPA's current regulations do not set a SIL or AAI for O_3. Rather than determine equivalent standards for O_3 at the present time, BOEM is proposing to require ERM based on emissions precursors of O_3 when modeling would indicate the NAAQS for O_3 would be exceeded. Accordingly, lessees and operators would be required to add the results of their photochemical modeling, if required under section 550.304, to the existing background concentrations and determine if a NAAQS for O_3 would be exceeded for any averaging time. If any NAAQS is exceeded, the lessee or operator would be required to apply ERM. BOEM solicits comments both on this approach and whether photochemical modeling should be required in all cases. Alternatives could include reserving a full scale analysis until such time as the USEPA has established a SIL for O_3, applying a consultative process between applicant and BOEM consistent with current appendix W until such time as revisions to appendix W have been finalized and the USEPA has established or recommended significance levels.

Under the proposed rule, BOEM would eliminate the standard for TSPs, which measures the ambient concentration of particulates having a diameter of less than 100 micrometers. Instead, BOEM would formally adopt by cross-reference the two new standards that the USEPA created in place of the TSP standard: PM_{10} and $PM_{2.5}$. PM_{10} represents an ambient air concentration standard for particulates of a diameter of 10 micrometers or less, while $PM_{2.5}$ represents an ambient air concentration standard for particulates of a diameter of 2.5 micrometers or less. The USEPA's annual and 24-hour averaging time SILs for PM_{10} are the same as those which BOEM currently applies to TSP.[90] The current regulation's reference to TSP includes particulates of a larger size than those covered by the USEPA's definition of PM_{10}. At the time the current regulation was promulgated, the use of a TSP standard reflected the USEPA practice; however, the USEPA's standard for PM_{10} has been in place since 1987. Because the USEPA standard has been in place for many years, the majority of OCS operators have already adopted this standard, and BOEM has largely replaced TSP with PM_{10} in the GOM.

The existing SILs for other criteria air pollutants in BOEM's current regulations would not change as a result of this revision in BOEM's regulations, because they are currently set at the same levels as those set by the USEPA. The proposed rule would, however, incorporate the addition of new SILs established by the USEPA, since the adoption of BOEM's original air quality rule. Going forward, there is the possibility that the USEPA will further change the SILs, or add new SILs, in which case BOEM's decision to cross-reference the USEPA's regulation would automatically cause the BOEM significance threshold rates to change, as well.

There are some circumstances where the USEPA has not established a SIL for a given CP or in which it has established only an interim SIL that it or the relevant State air quality regulatory authority may also use in evaluating the impacts of a proposed facility. In some circumstances, the USEPA may have established one or more SILs in its regulations and an additional interim SIL(s), typically for some other averaging time(s), outside of its regulations. In other cases, the USEPA may have repealed a SIL without establishing a new one. Thus, there may be situations where a lessee or operator may propose a plan that exceeds the relevant EETs, then perform modeling only to find there may not be a relevant SIL to compare against its incremental emissions or a situation where it may be unclear which SIL(s) to use. In similar situations where the USEPA or the State would issue an air quality permit, the USEPA or the relevant State permitting authority has issued permitting guidance to supplement its regulations. The proposed rule does not contain a provision on this topic and BOEM solicits comments on how best to address this issue.

BOEM also requests comment on what BOEM should do about NAAQS that do not have corresponding SILs in the USEPA regulations; comments on the following two alternative approaches are particularly welcome. One alternative would be for BOEM to require in the final rule that, for any NAAQS (pollutant and averaging period) for which there is no SIL in 40 CFR 51.165(b)(2), lessee and operators must apply the appropriate SIL being used by the most affected State (at the point where the incremental emissions caused by the facility would be highest). Another alternative would be for BOEM to establish its own interim SILs based on the USEPA's interim SILs, to be used unless and until the USEPA finalizes appropriate SILs in its regulation at 40 CFR 51.165(b).

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[90] The annual SIL for TSP in the current BOEM regulations has an equivalent for PM_{10} because the USEPA has not revoked the annual SIL for PM_{10}, although the USEPA revoked the annual NAAQS for annual PM_{10} subsequent to the publication of BOEM's air quality regulations.

Section 550.306—What ERM are required for a short-term facility?

Proposed § 550.306 would set forth the requirements for ERM for both criteria and major precursor pollutants on a short-term facility when modeling shows the facility will cause emissions to exceed the SILs, or when modeling will indicate a violation of the NAAQS for O_3. ERM would also be required when emissions of VOCs exceed the EETs under the proposed § 550.303(b). Unlike the proposed requirements for a long-term facility, the proposed control requirements for a short-term facility would be the same for criteria and major precursor pollutants.

Under BOEM's existing regulations in § 550.303(h), "[t]he lessee shall apply BACT to reduce projected emissions of any air pollutant from a temporary facility which significantly affects the air quality of an onshore area of a State." The current regulations also explicitly exempt temporary facilities from the requirements for controls set out in current regulations in § 550.303(g), which require additional analysis on top of the application of BACT for non-temporary facilities. In contrast, the proposed rule would require lessees and operators to apply only operational controls and/or equipment replacements, but not BACT in those situations where a SIL or VOC EET is exceeded. The proposed rule, like the current regulations, would not require additional AAI analysis after the application of ERM for a short-term facility.

Under the proposed rule, an ERM analysis would start by identifying all available non-BACT control measures that would be relevant to the emissions of the pollutant(s) for which ERM would be required. The lessee or operator would then determine which of these are technically feasible. BOEM is proposing to define "technically feasible" in proposed § 550.302. The proposed rule would also add a requirement that a "demonstration of technical infeasibility must be clearly documented and must show, based on physical, chemical or engineering principles, that technical difficulties would preclude the successful use of the applicable emission control technology or methodology." The lessee or operator would rank the technically feasible control measures by their ability to reduce actual emissions, based on the overall emission control efficiency (*e.g.,* percent pollutant removed, or emissions per unit of product) for each alternative. The lessee or operator would then evaluate and select the non-BACT ERMs that are technically feasible and that are designed to limit the facility's projected emissions to the greatest practicable extent, taking into consideration the effectiveness of emissions control(s). Then the lessee or operator would be required to evaluate the cost effectiveness of each of the selected technically feasible operational controls in order to determine its economic impacts and feasibility. To justify elimination of an option on economic grounds, the lessee or operator should demonstrate that the costs of pollutant removal for that option are disproportionately high. As an alternative, lessees or operators could substitute permanent emissions credits for operational controls or equipment replacements, at their discretion.

If no technically feasible operational controls or equipment replacements could be implemented cost effectively and the projected emissions affect only attainment areas, then no ERM would be required for the pollutant exceeding a standard other than those that the lessee or operator proposed in its plan. If no technically feasible operational controls or equipment replacements could be implemented cost effectively, and the projected emissions would affect a non-attainment area, then the Regional Supervisor could require the implementation of other ERM, including BACT, as a condition of approving the lessee's or operator's plan. Such ERM could be required on either a permanent or temporary basis, depending on the circumstances and location of the proposed facilities. If this ERM includes any proposed BACT, then the lessee or operator would be required to provide a description of the associated energy, environmental, and economic impacts, and other costs.

The nature of any ERM could vary widely depending on the issue being addressed and the location of the relevant operations. Examples of such measures could be: Running specific equipment at optimal efficiency for certain periods of time, only operating certain equipment on specific days or for some number of days in a month or week or at specific times of day, etc. They could vary based on the existing background levels of pollution, the climatic conditions and the type of plan proposed. Operational controls could involve using specific types of fuel or specific types of combustion technology or limiting the use of certain equipment to a specific purpose or circumstance. They could also involve keeping certain equipment at a specified distance from other equipment or facilities, etc.

The purpose of implementing such controls would be to keep the volume of air pollutants produced in connection with the operations conducted under a plan within a range such that none of the AAQSB would be violated, either on a temporary or ongoing basis, thereby ensuring such operations comply with BOEM air quality requirements.

Paragraph (b) of the proposed section would specify what must be included in a lessee's or operator's plan describing the results of the ERM analysis. This would consist of: An evaluation of the ERM selected, quantifying and verifying the emissions reductions measures and associated costs; a description of how the selected operational controls or replacement equipment meets the criteria in § 550.309 for ERM; and a calculation of the revised projected emissions (or complex total emissions, where applicable), taking into account the selected operational controls or replacement of equipment.

The proposed rule would specify that, if an operator has committed to apply appropriate operational controls or replacement of equipment, in the case of a plan affecting only an attainment area, or committed to apply appropriate ERM, with respect to a plan affecting a non-attainment area, BOEM could approve the plan, provided all other applicable requirements have been met. However, if BOEM were to have a reason to believe a lessee's or operator's projected emissions may cause the NAAQS to be exceeded, the Regional Supervisor could require additional data, analysis, or modeling to demonstrate compliance with the NAAQS or might require additional ERM so that the NAAQS are not exceeded.

Section 550.307—What ERM are required for a long-term facility?

Unlike short-term facilities, long-term facilities are generally intended to remain in operation for many years. Correspondingly, they, in conjunction with their MSCs, generally emit considerable amounts of air pollutants on an ongoing basis. Because of this, long-term facilities warrant more stringent air quality compliance requirements. This proposed section describes the air quality control analysis required of such facilities.

Proposed § 550.307 would set forth the requirements for ERM on a long-term facility when modeling shows the facility will cause emissions exceeding the AAIs or SILs (or when it would cause a violation of the NAAQS for O_3). This proposed section would expand upon the existing control requirements for facilities in § 550.303(g) of the existing regulations. The current regulations mandate the application of BACT whenever a facility's emissions exceed the SILs, but they then allow "the application of additional emission controls or through the acquisition of offshore or onshore offsets." The proposed rule eliminates the preference for BACT and provides for additional options, including equipment swaps and operational controls. As is the case with current BOEM regulations, the requirements of this section differ depending on whether the potential impacts of any proposed facility would affect only attainment areas or whether non-attainment areas might also be affected. More stringent air quality requirements, of course, apply to situations where an area already exceeds a relevant pollution standard than in an area that is below that standard (*i.e.*, has better overall air quality). BOEM has not proposed a definition of what "affect" means in this context but solicits comments on how this determination should be best made.

One alternative would be that a facility that does not cause an exceedance of a SIL at any location in a State would not be considered to be one that impacts an affected area of the State. Conversely, any location at which a facility's projected emissions could cause an exceedance of a SIL would constitute an affected area of a State for the purpose of this rule. The difficulty with this approach, however, lies in the fact that there may be many locations at which a SIL is exceeded and the boundary of this exceedance may be difficult or impractical to determine—particularly in the context of the non-attainment areas.

Another alternative would be to require that any modeling be done with receptors just inside the outer boundary of a non-attainment area or at the attainment/non-attainment area boundary nearest to, or directly downwind of, the proposed facility. If modeling indicates that that no AAQSB would be exceeded at that point, then no non-attainment area would be considered affected by the proposed facility.

There may be other approaches to handling the determination of affected areas. BOEM would welcome suggestions or alternatives for how best to address this issue.

Paragraph 550.307(a)—Control of Emissions of VOCs From a Long-Term Facility

The proposed rule at § 550.307(a), like the current regulation, separates requirements for controls of VOCs from requirements for controls for other air pollutants. If the projected emissions of VOCs exceed an emission exemption threshold, then the lessee or operator would be required to apply controls. The controls required would depend upon the attainment status of the areas of the State(s) potentially affected by the emissions. If the projected emissions affect, or have the potential to affect, only attainment areas for O_3 and $PM_{2.5}$, then the lessee or operator would be required to propose ERM, excluding BACT, and would be required to demonstrate the proposed ERM would reduce the emissions of VOCs to the lowest practicable and reasonable rate (*i.e.*, the lowest rate that can reasonably be achieved). If any designated non-attainment area for O_3 or $PM_{2.5}$ is affected, then the lessee or operator would be required to evaluate all the potentially applicable ERM, including BACT, and propose sufficient ERM to reduce VOC emissions below the applicable emission exemption threshold. For any proposed BACT, the operator or lessee would be required to provide a description of the associated energy, environmental, and economic impacts, and other costs.

Paragraph (a)(3) of the proposed section would provide for an exception to the requirement to reduce VOC emissions when they affect a State coastal area where an increase in VOCs would not lead to the formation of increased O_3 or would lead to a decrease in the formation of O_3. The proposed rule would also provide that emissions credits could be utilized as an alternative to any other relevant ERM, regardless of the attainment or non-attainment status of any area that would potentially be affected by the projected emissions associated with any lessee or operator's proposed plan.

Paragraph 550.307(b)—Control of Emissions of Criteria Air Pollutants From a Long-Term Facility

For emissions of criteria air pollutants, the controls that would be required for long-term facilities also depend on the attainment status of the area affected by the projected emissions. If all areas affected by the projected emissions are designated attainment areas, then the lessee or operator would be required under § 550.307(b)(1) to evaluate all the potentially applicable ERM, excluding BACT, and propose sufficient ERM to reduce the ambient impact of the projected emissions and to conduct refined modeling to show the effects of the ERM, using the process described in proposed § 550.306(a)(1) through (4) for a short-term facility. Once the appropriate ERM have been determined, the lessee or operator should re-conduct modeling to evaluate the effect of applying ERM to reduce emissions and to determine whether or not the operator or lessee's reduced emissions would cause an exceedance of the AAIs. Lessees and operators would be required to combine the ambient air effects of their emissions with the emissions from other onshore and offshore sources which contribute to the consumption of the maximum allowable increases above the baseline concentrations for each air pollutant and baseline area, as established in 40 CFR 52.21. In conducting this additional modeling, operators would be required to use the ambient air concentration data, as specified in proposed § 550.304(e)(2). If this modeling shows that ERM is not sufficient to reduce the projected concentration increases below the AAIs applicable to the potentially affected State, then the lessee or operator would be required to apply additional ERM and perform additional modeling until such efforts confirm that no AAIs would be exceeded. As discussed above, this was the intent expressed in the preamble to the BOEM's current rule. This proposed rule would make this intent clear in the regulatory text itself.

Once this additional modeling shows the ERM is sufficient to reduce the projected concentrations below the AAIs applicable to the potentially affected State, then the lessee or operator would be required to compare the resulting design concentration of each criteria air pollutant with the NAAQS. If any of the NAAQS are shown to be exceeded, the lessee or operator would be required to apply additional ERM and perform additional modeling until it determines none of the NAAQS would be violated.

As discussed earlier, the current regulations use the MACIs in place of the AAIs for determining whether long-term facilities have sufficiently reduced their impacts on attainment areas. The MACIs were based on the AAIs at the time the current rule was promulgated. While BOEM is now proposing to cross-reference the AAIs, it is also considering whether other standards would be better. Particularly, BOEM is considering whether it would be better to use standards that are based on a percentage of the level of the NAAQS, rather than the AAIs. BOEM would appreciate comment on this issue and on what standards to set. BOEM also requests comments on the most appropriate method for defining the size and extent of the relevant "baseline areas" for the purpose of conducting the AQRP analysis.

Under the proposed rule at paragraph 550.307(b)(2), if projected emissions affect any area designated as a non-attainment area, then the lessee or operator would be required to evaluate all the potentially applicable ERM, including BACT, and propose sufficient ERM to reduce the ambient impact of its emissions of all criteria air pollutants below the applicable SILs at 40 CFR 51.165(b)(2). The proposed rule would then require a lessee or operator to conduct modeling using the revised projected emissions and compare the results with the SILs. If photochemical modeling would be required under § 550.304, then the lessee or operator would be required to also perform photochemical modeling and add the results of that modeling to the results of the additional dispersion models. If the modeling results exceed any SIL for any criteria air pollutant for any averaging time, then the lessee or operator would be required to apply additional ERM until additional modeling demonstrates all projected emissions have been fully reduced below the SILs for all criteria air pollutants for every applicable averaging time.

Paragraph 550.307(c)—Exceptions to the ERM Requirement

The proposed rule at § 550.307(c) would also provide that, for any averaging time other than an annual period, a facility's projected emissions may cause an ambient impact that exceeds an applicable AAI one time during any rolling 12-month period for any given criteria air pollutant at any one location and still be considered to have fully reduced emissions. This provision is retained from the language in existing regulation § 550.303(g)(2)(i)(B), which states: "For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one onshore location;" however, slight changes have been made in the wording for clarity.

Additionally, this proposed paragraph would provide that if an operator or lessee's projected emissions of NO_X potentially affect a State coastal area, but would not cause an increase, or would cause a reduction, in the formation of O_3, then no ERM are required for NO_X. However, this exception would not apply if the potentially affected area is an attainment area for NO_2 and the lessee or operator's analysis indicates that the AAIs for NO_2 would be exceeded in the absence of such ERM or if the potentially affected area is a non-attainment area for NO_2.

This proposed paragraph would also provide an exception if the implementation of a plan under these regulations would compromise the safety of the operation of the facility, and such implementation of any AAQSB cannot be otherwise addressed.

Paragraph 550.307(d)—NAAQS Requirement Applicable to All Plans

The proposed rule at § 550.307(d) would contain a provision, consistent with the current BOEM regulations at § 550.303(g)(2)(i)(B) ("No concentration of an air pollutant shall exceed the concentration permitted under the national secondary ambient air quality standard or the concentration permitted under the national primary air quality standard, whichever concentration is lowest for the air pollutant for the period of exposure"), stating no concentration of an air pollutant could exceed the concentration permitted under any primary or secondary NAAQS, whichever concentration is lowest for the air pollutant for the period of exposure. The proposed rule would state that NAAQS may not be exceeded, even for a short-term facility.

Paragraph 550.307(e)—Emissions Credits

The proposed rule would clarify that a lessee or operator may propose to use emissions credits to achieve the equivalent reduction of emissions for any criteria air pollutant as an alternative to any other ERM, regardless of the attainment status of the State area affected by its facility's potential emissions.

Section 550.308—Under what circumstances will BOEM require additional ERM on my proposed facility or facilities?

The purpose of this proposed provision is to provide a safeguard to the plan approval process, such that any approval of a facility made according to these regulations does not cause a violation of an applicable air quality control standard. Because all of BOEM's plan reviews are done on a prospective basis, it is possible the impacts of the implementation of such a plan could cause an adverse effect on a State that was not anticipated. This provision in the proposed rule provides a mechanism for State and local government entities, and certain Federally-recognized Indian tribes, that might be adversely affected by the approval of a plan or a RUE, pipeline ROW, or lease term pipeline application to raise objections on the basis of data or information that may not have been available to BOEM at the time a plan was originally approved. The current rule contains a similar provision that applies only to States.

The current regulations, under § 550.303(j), provide "[i]f . . . the Regional Supervisor determines or an affected State submits information . . . which demonstrates . . . that projected emissions from an otherwise exempt facility will, either individually or in combination with other facilities in the area, significantly affect the air quality of an onshore area, then the Regional Supervisor shall require the lessee to submit additional information to determine whether emission control measures are necessary."

Paragraph 550.308(a)—Regional Supervisor Review

The proposed rule at § 550.308(a) would expand upon this provision by specifying the Regional Supervisor could require the lessee or operator to apply additional ERM on either a temporary or permanent basis, depending on the circumstances, if he/she determines the projected emissions, or, where applicable, complex total emissions, may cause or contribute to a violation of a NAAQS, based on (1) information submitted by a State, or a local government, or a Federally-recognized Indian tribe; (2) information resulting from a cumulative impacts analysis conducted for a NEPA analysis; (3) a compliance review of a proposed plan under subpart B, § 550.232(b) for an EP, or § 550.267(c) for a DPP or DOCD; or (4) the declaration by an adjacent State, or the USEPA, of an air quality emergency for a location that may be affected by air emissions generated by operations.

Paragraph 550.308(b)—Lessee's or Operator's Right To Challenge

The proposed rule would provide in § 550.308(b) any lessee or operator affected by the requirements of this section would be given notice of the Regional Supervisor's determination under paragraph (a) of this proposed section, as well as an opportunity to present additional information and analysis for review by the Regional Supervisor. Under the proposed rule, if the lessee or operator presents the Regional Supervisor with additional information and analysis, the Regional

Supervisor would reassess whether the projected emissions, or complex total emissions, might cause or contribute to a violation of any NAAQS, and whether additional ERM would be required for the facility. Similar to the current regulations, under the proposed rule, the Regional Supervisor would then notify the affected State, or Federally-recognized Indian tribe, and explain the reasons for this determination.

Section 550.309—What requirements apply to my ERM?

The proposed rule would provide explicit requirements to ensure the sufficiency, effectiveness, and control efficiency for a lessee's or operator's ERM. It also would specify how a lessee or operator could use emissions offsets.

Paragraph 550.309(a)—Sufficiency

Under the proposed rule at § 550.309(a), a lessee's or operator's proposed ERM would need to be sufficient to achieve actual emissions reductions corresponding to those reported in the plan for the duration of the plan's operations under all reasonably foreseeable conditions. Under the proposed rule, the Regional Supervisor would review a lessee's or operator's proposed ERM on a case by case basis and make a determination whether such measures met the applicable criteria.

Paragraph 550.309(b)—Effectiveness

Under § 550.309(b), the lessee or operator would need to continually ensure the effectiveness of its ERM for the duration of the plan's operations under the proposed rule. If emissions reductions measures become disabled or unavailable, the lessee or operator must immediately notify the Regional Supervisor and replace such ERM with others of equal or superior effectiveness within 30 days of discovering the disability or unavailability, unless the Regional Supervisor approves an extension not to exceed 90 days.

Paragraph 550.309(c)—Control Efficiency

The proposed rule at § 550.309(c) would specify that the analysis of the proposed ERM would need to reflect actual ECE. The proposed rule would require a lessee or operator to substantiate any ECEs it projects and provide sufficient evidence to justify its projected ECEs to the satisfaction of the Regional Supervisor. The rule would further specify at § 550.309(c)(1) that, should the substantiating data indicate a range of efficiencies, the lessee or operator would be required to utilize the more conservative estimates (*i.e.*, those that would result in lower ECE) in its analysis and modeling. The intent of this provision is to ensure the proposed benefits that would result from BACT and/or other emissions controls would not be over-estimated, in order to ensure any controls that are proposed would be sufficient to actually reduce the emissions of a proposed facility to the levels projected in the analysis conducted pursuant to subpart C. Consistent with this, a further requirement is proposed at § 550.309(c)(2) whereby ECE estimates of 100 percent ECE would generally not be considered acceptable, except in cases where there is clear and convincing and/or historical evidence to justify their use. This requirement recognizes the fact there are virtually no emissions control mechanisms that can entirely eliminate all potential air pollutant emissions, and it is both unrealistic and unreasonable to make such an overstated estimate, without definitive evidence of its accuracy.

Paragraph 550.309(d)—Emission Reduction Monitoring

Further, under § 550.309(d), if ERM would be required in an approved plan, then the proposed rule would authorize the Regional Supervisor to require lessees and operators to provide information needed to verify the effectiveness and efficiency of the proposed ERM. The proposed rule states that a lessee or operator with a plan that is approved subject to the application of BACT must ensure that the emissions associated with each emissions source for which BACT is required complies with the emissions verification requirements of § 550.311 of this subpart. The rule further states that the Regional Supervisor may also require the installation of emissions measurement meters if the Regional Supervisor determines that such meters are necessary to ensure compliance with this requirement (*i.e.*, that other alternatives may not be sufficient to ensure compliance).

Paragraph 550.309(e)—Emissions Credits

The purpose of acquiring an emissions credit is to cause a reduction in the emissions of a given pollutant from a business or activity unrelated to the plan, so that the total concentration of a given pollutant within a given area will not increase (as a result of the operations associated with a plan) beyond a permissible level.

The proposed rule at § 550.309(d) would set forth requirements for emissions credits. First, the lessee or operator would be required to acquire emissions offsets from emissions source(s), either offshore or onshore, that affect the air quality of the same AQCR). Second, for a CP, the emissions credits that the lessee or operator proposes would need to provide a net air quality benefit for the same pollutant; for a precursor pollutant, any emissions credits that a lessee or operator proposes would need to provide a net air quality benefit for that CP for which the pollutant is a precursor. Third, the lessee or operator would need to demonstrate to the Regional Supervisor that the emissions credit it proposes binds it and any other parties who agree to lower their emissions. Fourth, the lessee or operator would need to also demonstrate that any emissions reductions will last for the entire period of operations covered in its plan. The Regional Supervisor might periodically require the lessee or operator to certify that the emissions reductions are still in place. Fifth, any emissions credits would need to reduce emissions below rates otherwise required by law. Sixth, in addition to BOEM, the lessee or operator would be required to notify the appropriate State air quality control jurisdiction of its proposal to acquire emissions credits, modify the permit for the underlying onshore facility to reflect the proposed reduction in emissions and, if necessary, its need to revise the State Implementation Plan to include the information regarding the emissions credits the lessee or operator has acquired. Seventh, emissions credits would be allowed in those circumstances where BOEM could readily verify the historical emissions from the facility to be used for the emissions credit, and the emissions reduction associated with the acquired emissions credit. Eighth, the approval of an emissions credit would not be granted unless the reductions in emissions associated with the credit are verifiable by an appropriate State, tribe or federal agency (primarily through the modification of the air emissions permits for the relevant onshore facility). Finally, the proposed rule would specify that nothing in these regulations is intended to restrict emissions credits from being obtained and divided among multiple lessees or operators.

If an OCS lessee or operator proposes to use emissions credits as an emission reduction measure (ERM), in lieu of BACT, operational controls or the replacement of equipment used on the OCS, then that lessee or operator would be responsible for ensuring that the reductions are permanent and verifiable.

In the event that a lessee or operator elected to reduce the pollutant emissions of an onshore facility to offset corresponding emissions for a new facility proposed on the OCS, that lessee or operator could ensure that the reductions are permanent and verifiable by notifying the relevant State air quality regulatory body and seeking a modification of the permit for the underlying onshore facility to reflect the proposed reduction in emissions. The State could then update the permitted level of emissions which would ensure compliance with the reduced emissions requirements on an ongoing basis. The State could also update its SIP, if appropriate, and modify its reporting to the U.S. Environmental Protection Agency. BOEM does not believe that this process would be unduly burdensome to the States or that it would require any State-funded monitoring or compliance activities beyond those that are already in place or contemplated.

Rather, BOEM believes that this process would largely be beneficial to the States, in that the reduction in air emissions of onshore facilities, beyond those that would otherwise be legally required, could cause a net air quality benefit to the States and localities affected. Such a change could also allow a greater level of economic development, and a greater number of approvals for additional stationary sources onshore than might otherwise be the case (in the absence of the emissions credit). For these reasons, BOEM believes that the potential use of emissions credits by lessees or operators would be neither onerous nor unreasonable.

The proposed rule would allow emissions credits to be obtained and divided among multiple lessees or operators (presumably located near to one another in the vicinity of the State) in order to spread the costs of complying with air quality requirements over a broad area, or for any other reason.

The manner in which the proposed rule would have the potential to affect the relationship between the federal and State governments has to do with a situation in which an OCS lessee or operator proposes to use emissions credits as an emission reduction measure (ERM), in lieu of BACT. In the event that a lessee or operator elected to reduce the pollutant emissions of an onshore facility to offset corresponding emissions for a new facility proposed on the OCS, that lessee or operator would be required to notify the relevant State air quality regulatory body and arrange for the modification of the permit for the underlying onshore facility to reflect the proposed reduction in emissions. The State could then update the permitted level of emissions which would ensure compliance with the reduced emissions requirements on an ongoing basis. The State may also need to update its SIP, as appropriate, and modify its reporting to the USEPA. Lessees have not typically utilized emissions credits as a pollution mitigation measure in the past. BOEM solicits comments on the practicality and potential costs associated with the implementation of these proposals at the State level, as well as comments on how these proposals could most effectively be implemented in coordination with the States.

Paragraph 550.309(f)—Emission Reduction Measures

Under proposed § 550.309(f), unless otherwise specified, the lessee or operator could employ any operational control, equipment replacement(s), BACT, or emissions credit, on either a temporary or permanent basis, to reduce the amount of emissions that would occur in the absence of such measures. The proposed paragraph would also provide that any proposed ERM would become a condition of its plan upon approval and could be required on either a permanent or temporary basis, depending on the circumstances and location of the proposed facilities.

In addition, the rule would clarify that any lessee or operator proposing a plan that includes equipment replacement would be subject to compliance with all other applicable federal regulations, including those of the USCG.

Section 550.310—How will revisions to the ambient air standards or benchmarks affect my plan?

Paragraph 550.310(a)—Review of Plans

The proposed rule at § 550.310(a) specifies that BOEM would review air pollutant emissions data in a plan according to the AAQSB that are in effect on the date the plan is deemed submitted. Because BOEM's regulations would cross-reference the USEPA's standards, BOEM would make the appropriate changes to its review of plans if the USEPA revised such standards.

Paragraph 550.310(b)—Proposed Plans

The proposed rule at § 550.310(b) would specify that all activities described in initial, revised, modified, and supplemental plans would be required to comply with the AAQSB in effect on the date the plan is deemed submitted.

The proposed rule, however, would provide exceptions in two situations. First, under § 550.310(b)(1), if a plan were deemed submitted shortly after the effective date of a new or revised AAQSB, and the lessee or operator believed the immediate application of the new or revised AAQSB would be impracticable or would otherwise impose an unreasonable hardship on its proposed operations, then the lessee or operator would be able to request a deferral from the requirement to comply with the new or revised standard. The Regional Director, with the concurrence of the Director, would review the request and would have the discretion to grant a temporary deferral, not to exceed two years, from compliance with the new or revised AAQSB based upon a finding of impracticability or undue hardship. Second, under § 550.310(b)(2), for any proposed plan, upon a finding that noncompliance with a new or revised AAQSB would not significantly affect the air quality of any State onshore or over State submerged lands, the Director would be able to grant a departure from compliance with the revised AAQSB. The Director would have the discretion to condition the departure upon any requirement(s) deemed necessary to avoid causing or contributing to a violation of the pre-existing NAAQS. This exception would account for situations in which the USEPA could revise or add an ambient air quality standard or benchmark that would not be relevant to OCS operations or that would go beyond BOEM's mandate to prevent significant effects on the air quality of a State, would be impracticable, or would otherwise impose an unreasonable hardship.

Paragraph 550.310(c)—Approved Plans

Under the proposed rule, if a lessee or operator is operating under an approved plan, it would be required to resubmit a plan for a periodic air quality review no more frequently than ten years after BOEM's previous approval of the plan. This provision would be added in furtherance of the objective of section 5(a)(8) of OCSLA, which requires BOEM to ensure compliance with the NAAQS, and which makes no exceptions with respect to previously approved plans. All of the applicable requirements of this subpart in effect on the date of resubmission would apply on the same basis to a resubmitted plan as for an initial plan. BOEM requests comments on this provision, particularly with respect to the potential impact on lessees and operators.

In order to ensure that the lessee or operator's emissions remain compliant with OCSLA's air quality mandate, starting in 2020, subsequent to the date of the Notice, BOEM proposes to conduct periodic reviews of plans approved prior to the effective date of the new exemption thresholds. At that point, each lessee or operator whose plan was approved prior to the effective date of this proposed rule would be required to resubmit its plan for a new air quality review on a schedule listed in the proposed rule. Although the length of time required between the original plan review and the subsequent follow-up review would vary, in no case would a lessee or operator be required to re-submit its plan for an air quality review more than once every ten years.[91] A plan initially submitted or resubmitted pursuant to this proposed provision would be required to comply with the provisions of § 550.205 as they exist at the time the plan is submitted, using the most current data on emissions factors and MSC emissions, and such a plan would, in all cases, be reevaluated against the EETs and formulas as they exist at the time of the plan resubmission, rather than those in effect at the time the plan was originally approved.

When a plan is resubmitted under this provision that plan would be required to include estimates for the annual projected emissions for the subsequent ten years or for however long the facility would be expected to remain in operation, whichever is shorter. With respect to the emissions calculations for any given emissions source, the resubmitted plan would be required to account for the most recent available data on the actual emissions of that emission source. Under the proposal, if a plan would indicate an exceedance of any applicable emission exemption threshold, all applicable requirements of this subpart would apply as for an initial plan.

For plans that were approved prior to the effective date of this rule, the lessee or operator would be required to submit a new plan for a new air quality review of its existing facilities according to a schedule in a table listed in the proposed rule. This table would require that the oldest plans be submitted first for re-review and that the most recently approved plans would be re-submitted last, according to the same ten-year review cycle. In each case, each plan would be due the same month as the month in which the plan was originally approved.

After the year 2023, plans would be re-reviewed every ten years; and the plan resubmission would be required in the month of the tenth anniversary of the initial plan approval, or the month of the tenth anniversary of the approval of a revised, modified, resubmitted or supplemental plan, whichever is later.

If a lessee or operator proposes to make a change to the equipment on its existing facility or facilities in a year or years when its plan already anticipated operations, and its proposed change would result in an increase in air pollutant emissions from that equipment for any air pollutant, the lessee or operator would be required to submit a revised plan, not simply a plan that describes the specific change being proposed.

The proposed rule would provide that if a lessee or operator fails to submit a revised plan as required under this section, then the previous approval of its plan would be revoked. In this circumstance the lessee or operator could also be subject to civil penalties or other appropriate sanctions, including the requirement to cease operations.

Section 550.311—Under what circumstance will I be required to measure and report my actual emissions?

The purpose of this section is to describe under what circumstances a lessee or operator would be required to demonstrate its actual emissions have been and are in compliance with its previously approved plan(s).

Paragraph 311(a)—Compliance Demonstration Conditions

Paragraph (a) of this proposed section would provide that facilities described in plans that were approved by BOEM under the listed conditions would be required to measure actual emissions: (1) If a plan is approved subject to the implementation of BACT or emissions credits; (2) if any emissions source on your facility uses any engine or equipment that is neither certified by the USEPA for domestic use in the U.S. nor MARPOL-compliant; (3) if the Regional Supervisor determines that lessees or operator's projected emissions, complex total emissions, for any criteria or precursor air pollutant, calculated on either an annual basis or on the basis of a 12 month rolling sum, may significantly underestimate the actual emissions, based on either historical data or ambient air monitoring; or, (4) if BOEM determines that your facility is causing or contributing to an exceedance of the NAAQS in any State.

Paragraph 550.311(b)—Emissions Reporting Requirements

For lessees and operators who would be required to measure and report actual emissions, proposed subsection (b) would state several basic requirements for measurement and reporting of actual emissions. Lessees and operators that are required to measure and report emissions would be required to include enough of the emissions sources to ensure that the actual emissions associated with facilities and MSCs operating under an approved plan are consistent with the projected emission limits approved for that plan. In other words, they would be required to demonstrate that a sufficient number of their large emissions sources are at or below the projected emissions for that equipment so that the emissions associated with the remaining emissions sources would not be sufficient to cause an exceedance of the projected emissions limits approved in the plan.

Under the proposed rule, each lessee or operator would be required to consider every source that was included in its approved plan in addition to any source that would be classified as part of the projected emissions if the plan were resubmitted under the current regulations. Since the objective is to ensure that the actual emissions associated with facilities and MSCs operating under an approved plan do not significantly exceed the emissions projected for that plan, BOEM proposes to provide (as an option) a list of the kinds of emissions sources that lessees and operators could monitor to satisfy the requirements of this paragraph. On facilities, engine reporting and monitoring would include and apply to: Onboard facility engines; power generation engines; Hydraulic Power Units (HPU); deck cranes; cementing units; and other engines with a maximum power rating exceeding 200 hp (149 kW). On facilities, this list would exclude: propulsion engines, boilers and incinerators, emergency generators, and lifeboat engines. For MSCs, the emissions sources subject to measurement and reporting could include: Propulsion engines; power generation engines; marine auxiliary engines; and engines with a maximum power rating exceeding 200 hp (149 kW). On MSCs, this list would exclude boilers and incinerators, emergency generators, all engines onboard science vessels, offshore supply vessels, or lifeboats.

Further, measurement of actual emissions would be required to reflect actual operations on the OCS and not exclusively on the basis of ECEs, fuel logs, or activity data. The lessee or operator would need to demonstrate that the data submitted to BOEM under this section is consistent with any data provided to BOEM under the requirements of § 550.187. The lessee or operator would be required to provide this information in a manner and on a schedule determined by the Regional Supervisor.

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[91] Unless the lessee or operator were required to re-submit a plan for reasons unrelated to the ten-year periodic review cycle (*i.e.,* because it was proposing to change the plan schedule, add additional equipment or for some other reason).

BOEM solicits comments as to how it should best implement the requirements of this section with respect to those facilities that would be required to report their actual emissions. BOEM invites comments on this issue with respect to how best to achieve the objective of obtaining actual data on potentially large pollution emitters while not adversely impacting those small-volume emitters whose emissions do not have any realistic potential to adversely affect the air quality of any State.

Paragraph 550.311(c)—Notification Requirements

Proposed paragraph (c) would require the lessee or operator to notify BOEM, if any of its actual emissions exceed its projected emissions at any time after the plan has been approved and to provide BOEM with the appropriate data regarding the exceedance.

If a lessee or operator proposes to make a change to the equipment on its existing facility or facilities in a year or years when its plan already anticipated operations, and its proposed change would result in an increase in air pollutant emissions from that equipment for any air pollutant, the lessee or operator would be required to submit a revised plan, not simply a plan that describes the specific change being proposed.

Paragraph 550.311(d)—Data Submittal Requirements

As with the reporting done pursuant to § 550.205(d) of the proposed section would specify that a lessee or operator must submit data and information in a format, and using the forms, specified by BOEM. The lessee or operator must submit information in an electronically-readable format, unless otherwise directed by the Regional Supervisor. If it transmits the information to BOEM electronically, then it must use a delivery medium or transmission method authorized by BOEM.

While the current regulation requires monitoring and reporting of emissions, it does not specify what monitoring is required. The proposed rule at § 550.311 would provide more specificity on how the monitoring and reporting must be carried out. BOEM believes a more comprehensive approach to emissions measurement and monitoring could improve the quality and type of information for estimating impacts on affected States. BOEM requests comments and suggestions with respect to the best approach to post-approval record-keeping, monitoring and reporting, including potential alternative approaches.

Section 550.312—What post-approval recordkeeping and reporting is required?

Paragraph 550.312(a)—Stack Testing

The proposed rule would include requirements necessary to validate the emissions estimates that are described in a plan. The proposed rule would specify at § 550.312(a) if stack testing was used as a method to develop emissions factors under proposed § 550.205 or was used to develop any other information submitted pursuant to that section, then a lessee or operator would be required to conduct the stack testing every three years and to report the results. BOEM seeks comment on whether it should require or recommend that the stack testing data be collected with the USEPA's electronic reporting tool and submitted via CDX (Compliance and Emissions Data Reporting Interface-), so that the USEPA can update the AP 42/WebFIRE emissions factors and so BOEM can compile the relevant data and supply it to other lessees and operators for their use in the future.

Paragraph 550.312(b)—Fuel Logs and Activity Data

Proposed § 550.312(b) would describe the recordkeeping requirements that would be necessary to demonstrate compliance with the plan in all cases, whether or not ERM are required and whether or not the conditions in proposed § 550.311(a) were satisfied. Under the proposed rule, lessees or operators would be required to retain information on monthly fuel consumption, for each emissions source, including attributed emissions sources, showing the quantity, type, and sulphur content of fuel used; collect facility and equipment usage information, including hours of operation at each percent of capacity for each emissions source. Venting, flaring, flashing and any other release of any air pollutant emissions that would not otherwise be accounted for by fuel consumption would be required to be reported for any emissions source that generates criteria air pollutants or precursor air pollutants in connection with OCS activities.

The proposed rule would require the lessee or operator to retain this information for a period of no less than 10 years. Reporting of fuel logs, facility and equipment activity and usage information, and fuel sulphur content must be provided to BOEM on a schedule established by the Regional Director. This provision is intended to ensure ongoing air quality compliance, after a plan is approved. It would both maintain consistency with the USEPA's approach to regulating OCS operations and retain the requirements of BOEM's current regulations at 30 CFR 550.303(k) and 550.304(g).

If BOEM elects to obtain the relevant data for a lessee's or operator's attributed emissions from an independent third party, then the Regional Supervisor may waive the requirement to submit fuel logs or collect facility and equipment usage information for MSCs.

BOEM solicits comment on whether there are other ways of collecting information or monitoring to ensure ongoing compliance with approved plans. Additionally, BOEM requests comment on alternative approaches to ensure compliance with an approved plan. BOEM also requests specific comment on whether there are ways to minimize the data collection and reporting burden associated with fuel logs while also ensuring the ongoing compliance with an approved plan. For example, there may be circumstances under which some facilities and/or MSCs would generate such low levels of emissions that there would be no practical possibility that the operations of those facilities and/or MSCs, cumulatively or separately, could exceed any relevant EET(s). Under those circumstances, the requirement to maintain fuel logs and/or activity data records may not be necessary or could be modified. BOEM solicits comment on what those circumstances may be and how BOEM might craft an exception or modification to the record-keeping requirements for small facilities and/or MSCs, so as to minimize the cost burden on lessees and operators—consistent with BOEM's need to ensure the integrity of its air quality regulatory program.

The proposed rule would also specify that record-keeping and reporting must be consistent with the USEPA's requirements for Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards. These are available in the following document: Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards, 80 FR 15099, RIN 2060–AP63, March 20, 2015.

Paragraph 550.312(c)—Meteorological Reporting

The current § 550.303(l) provides the Regional Supervisor may require, for a period of time and in a manner approved or prescribed, a lessee to collect and submit meteorological data from any of its facilities. The proposed rule in § 550.312(c) would include a provision with similar language. However, the proposed rule would add a provision allowing a lessee or operator to instead collect and report meteorological data derived from any other mutually agreed upon location with the approval of the Regional Supervisor.

Paragraph 550.312(d)—Other Information

The proposed rule in § 550.312(d) would add a provision to make clear the Regional Supervisor might require other information needed to support any finding or determination under subpart C.

Paragraph 550.312(e)—Additional Requirements Imposed by Other Agencies

The proposed rule would clarify that another federal agency could impose additional reporting, monitoring, or other requirements beyond those proposed by BOEM. None of the provisions of this paragraph would prevent the imposition of additional monitoring or reporting requirements on the part of BSEE or any other federal agency.

Section 550.313—Under what circumstances will BOEM impose additional requirements on facilities operating under already approved plans?

The proposed rule would provide that under certain circumstances BOEM might impose additional requirements on existing facilities operating under approved plans. In addition to the new requirement that all plans be subject to a ten-year re-review process, the proposed rule would provide that BOEM might impose other requirements on facilities operating under an already approved plan if an applicable AAQSB changes or if BOEM determines the operations are:

- Causing or contributing to a violation of the NAAQS, either individually or in combination with any other offshore operations (this provision would also account for plans approved with either a NO_X or VOC waiver that may not continue to be appropriate);
- Emitting unauthorized air pollutants;
- Creating conditions posing an unreasonable risk to public health or welfare; or
- Violating any applicable federal, State or tribal law related to air quality.

Also if a plan approved as a short-term facility later becomes a long-term facility, the proposed rule would require a lessee or operator to submit an initial plan under the standards applicable to long-term facilities. The proposed rule would allow the Regional Director to grant a temporary exception to this requirement if the short-term facility became a long-term facility as a result of adverse weather conditions or other circumstances beyond the lessee's or operator's control that delayed operations in the lease area. The exception would not be allowed to exceed the number of months the lessee or operator had been unable to operate.

Section 550.314—Under what circumstances will the Regional Supervisor review the projected emissions from my existing facility or facilities?

The purpose of this proposed section is to outline the ongoing requirements, which are intended to ensure the lessee or operator will not allow its facility or facilities to generate emissions in excess of those approved in the plan.

This section would update and modify the requirements in current § 550.304(a). That paragraph describes a process by which a State, or a Federally-recognized Indian tribe having either a TAS status or a USEPA-approved TIP, can request more information about emissions data or the review of an existing plan. The proposed rule would provide that a State or Indian tribe could request that the Regional Supervisor to supply it with the air pollution data regarding an existing facility's projected emissions, if such data were needed either for the updating of the State's or Indian tribe's emissions inventory or because a State or Indian tribe believed an existing facility's projected emissions might cause or contribute to a violation of the NAAQS. The proposed rule would further provide that lessees or operators might be required to submit air pollutant emissions data to the entity submitting such a request.

Further, under the proposed rule, the entity submitting a request would be permitted to submit information to BOEM that it believed indicated that projected emissions from an existing facility could cause or contribute to a violation of the NAAQS. In such a case, the lessee or operator responsible for the facility would be given the opportunity to present information to the Regional Supervisor that demonstrates its facility's projected emissions would not cause such an effect. The Regional Supervisor would evaluate the new information submitted and would determine whether the lessee or operator's actual emissions, including their attributed emissions, would have the potential to cause or contribute to a violation of the NAAQS. The Regional Supervisor would base this determination on an evaluation of the emissions data, the available meteorological data, and the distance of the facility from the State or Reservation. If the Regional Supervisor were to determine an existing facility's projected emissions had the potential to cause or contribute to a violation of the NAAQS, then the lessee or operator would be required to submit additional data as requested by the Regional Supervisor. This provision is intended to complement the provision described in § 550.205(m), which outlines those exceptional circumstances under which additional data or information may be required.

D. 30 CFR Part 550, Subpart J

The following change is proposed in part 550, subpart J:

Section 550.1012—What are the air quality requirements for pipeline rights-of-way holders?

Applications for rights-of-way are currently sent to and reviewed by BSEE. The proposed rule would not change that process except to add a requirement that any application for approval of a new pipeline ROW would also be subject to BOEM's air quality requirements. The proposed rule would specify that when a person applies for a right-of-way (ROW) in any part of the OCS under the air quality regulatory jurisdiction of the Department, its application would be required to include the information required by § 550.205 of this part and demonstrate that the ROW complies with subpart C of this part. The proposed rule would also specify that any requirement in either § 550.205 or subpart C that refers to plans should be interpreted to apply equally to rights-of-way and that any requirement that refers to lessees should be interpreted to apply equally to ROW holders or grantees.

There are a few exceptions proposed to these requirements that are based on the unique nature of pipeline ROWs: The provisions in subpart C that refer to the consolidation of multiple facilities and, the periodic resubmittal of plans under proposed § 550.310(c) would not apply to ROW holders or grantees.

In addition, the proposed rule specifies that no additional requirements would apply to a proposed or existing RUE that is already included within the scope of an existing or proposed exploration or development plan. The proposed rule would also specify that BOEM will notify BSEE of its determination that the organization or individual has provided the information required by § 550.205 and met the requirements of subpart C of this part. If necessary, BOEM would notify BSEE of additional conditions necessary to ensure that the activities will comply with subpart C of this part.

VI. Interagency and Public Outreach

The Department has and continues to make a substantial effort to review its proposals with relevant stakeholders, both within and outside the federal government. It has conferred, and intends to continue to further confer, with the BSEE, the BLM, the FWS, the NPS, the USEPA, the United States Coast Guard (USCG), the National Oceanic and Atmospheric Administration and other relevant federal agencies prior to formulating the final rule. BOEM also intends to review this proposed rule with affected States.

DOI strives to strengthen its government-to-government relationship with Federally-recognized Indian Tribes and Alaska Native Claims Settlement Act Corporations through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. This proposed rule will be subject to an extensive public comment period and the views of all potentially affected industry and interested environmental groups will be solicited and carefully considered. The Department will consider and evaluate the comments of all potentially affected and interested parties, consistent with the OCSLA mandate that it appropriately balance the economic benefits associated with "expeditious and orderly development" against the potential environmental risks (*i.e.,* "subject to environmental safeguards") that may be associated with any changes to existing air quality regulations.

VII. Legal & Regulatory Analyses

A. Statutes

1. National Environmental Policy Act (NEPA) of 1969

BOEM has developed a draft Environmental Assessment (EA) to determine whether this proposed rule would have a significant impact on the quality of the human environment under the NEPA. The draft EA is available for review and public comment in the docket for this proposed rule at *www.regulations.gov.* Questions or comments related to the EA should be directed to Eric Wolvovsky at 45600 Woodland Road, Sterling, VA 20166; phone (703)787–1719; or email at *Eric.Wolvovsky@boem.gov.*

2. Paperwork Reduction Act (PRA) of 1995

This proposed rule contains a collection of information that has been submitted to the OMB for review and approval under 44 U.S.C. 3507(d). If you wish to comment on the IC aspects of this proposed rule, you may send your comments directly to OMB (see the **ADDRESSES** section of this notice). Please reference 30 CFR part 550, subpart C, Air Quality, 1010—NEW, in your comments. To see a copy of the IC request submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently under Review); or you may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (703) 787–1025.

The title of the collection for this rule is Air Quality, 30 CFR part 550, subparts A, B, and C (Proposed Rulemaking).

This rulemaking proposes to add new IC requirements to current regulations under 30 CFR part 550, subparts A, B, and C. The IC for the current regulations has been approved under the following OMB Control Numbers:

- 1010–0114 (subpart A), expires December 31, 2016 (30,635 hours; $165,492 non-hour costs).
- 1010–0151 (subpart B), expires January 31, 2018 (432,512 hours; $3,939,435 non-hour costs).
- 1010–0057 (subpart C), expires January 31, 2018 (112,111 hours; $0 non-hour costs).

This rule would add new and expand existing requirements under regulations at 30 CFR part 550, subparts A and B, and would provide a rewrite of 30 CFR part 550, subpart C. Therefore, we are requesting OMB assign a new OMB Control Number for the IC requirements in the proposed rule. When the final rule becomes effective, we will move the requirements and burdens associated with subpart A and subpart B into their respective collections. We will use the new OMB Control Number for the IC requirements and burdens associated with the new subpart C and will discontinue the use of current OMB Control Number 1010–0057.

The PRA provides an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The rule proposes: To incorporate the USEPA's regulatory standards for air quality; address the expansion of BOEM's air quality jurisdiction to include the OCS adjacent to the North Slope Borough of the State of Alaska; account for technological advances in air quality measurement, evaluation, and reporting capabilities; take into account emissions from offshore supporting vessels; and reflect changes in practices and procedures as they have evolved. Potential respondents are holders and operators of federal OCS leases, operating rights holders, holders of Rights of Use and Easement (RUEs), holders of Pipeline Rights-of-Way (ROWs) or holders of a lease-term pipeline, and independent third-parties working on behalf of any of these persons. The frequency of response varies, but is primarily on the occasion or as per the requirement. Responses to this collection are mandatory or are required to obtain or retain a benefit. The IC does not include questions of a sensitive nature. BOEM will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), 30 CFR part 552, *OCS Oil and Gas Information Program,* and 30 CFR 550.197, *Data and information to be made available to the public or for limited inspection.*

We expect the estimated hour burden for the rulemaking to be 146,490 hours and $3,455,000 in non-hour costs. Some of the requirements, especially in subpart A, are not new; they are being moved or expanded. The table below provides a breakdown of the estimates for the rule. Current OMB-approved hours and requirements are in regular font; expanded requirements and hours are shown in italics. The proposed new requirements are shown in bold and are summarized as follows:

- Subpart A. BOEM is proposing to implement a requirement from the CAA to work with the USEPA to expand and maintain a national air emissions inventory. The requirement to submit a copy of a USEPA-required Episode Avoidance Plan is currently approved as part of the IC in subpart C but would be collected under subpart A (§ 550.141(d)) in the proposed rule. We expect no burden change since the occurrence is very limited and therefore the burden currently approved is sufficient. The proposed rule would expand a requirement under right-of-use and easement (RUEs) to account for air quality documentation and records (§ 550.160(*f*) +287 hours). The rulemaking also proposes to codify details regarding the gathering and reporting of OCS air inventory information, and broaden the requirement from being applicable only to the Western GOM to one that is applicable to all OCS regions. This requirement and the associated burdens are not new; they were originally accounted for in subpart C, but have been modified and moved to subpart A. The reasons for this are twofold. First, this requirement is unrelated to the regulatory requirements involving the review of the potential air quality impacts associated with proposed plans (*i.e.*, the primary purpose of subpart C). Second, the requirements for collecting and maintaining air inventory information are meant to apply to all owners and operators of facilities, including lessees, lease operators, operating rights holders, holders of RUEs or pipeline ROWs—whether or not that ROW includes an accessory structure—and all owners and operators of non-stationary sources operating on the OCS in support of any facility, whether or not such person was required to submit or comply with the requirements of subpart C (New § 550.187, +112,425 hours). This would increase the total burden under subpart A +112,712 hours.

- Subpart B. To simplify the air quality review process, BOEM is proposing to consolidate the requirements relating to air quality into one new section (§ 550.205), which would be equally applicable to all Exploration Plans (EPs), Development and Production Plan (DPPs), or DOCDs, as well as to any updates or modifications of any such plans. Proposed § 550.205 includes the expanded air quality emissions factors and reporting requirements for all emissions sources. The proposed rule would expand BOEM's air quality submission requirements to include any area in which BOEM is given jurisdiction, including the OCS adjacent to the North Slope Borough of the State of Alaska. To accommodate various changes in the air quality requirements, BOEM will modify its current air quality information forms (BOEM–0138, Air Emission Calculations for EPs, and BOEM–0139, Air Emission Calculations for DPPs and DOCDs). These forms will be updated to include the new air pollution emissions factors and to reflect the addition of new emissions sources and categories and types of equipment and vessels (*e.g.*, icebreakers). The forms will be restructured to better accommodate the consolidation of emissions across multiple, related facilities; to better reflect the goal of complying with USEPA AAQSB; and to reflect various other changes necessitated by the proposed rulemaking. The forms will be renamed so that it is clear that they are intended to be applicable and functional for all affected OCS Regions. BOEM is working with a contractor to revise these forms to provide automated calculations after data entry. The draft forms will be included in the docket for this proposed rulemaking and will be made available for public comment. The proposed modifications to the forms will increase the current aggregated burdens for submitting an EP, DOCD, and DPP by the following: for EPs, +3,100 hours; for DPP/DOCDs +5,150 hours. The proposed rule also expands the current requirement to submit post-approval information for EP/DPP/DOCD to include RUEs (§ 550.284 +224 hours). This would increase the burden under subpart B +8,474 hours.
- Subpart C. This rulemaking proposes a rewrite of current subpart C regulations to address new air pollution prevention and control requirements so we are addressing all requirements as new. This subpart would require analysis and modeling for expanded air emissions and compliance reporting for those criteria and major precursor air pollutants that exceed the threshold, and allow for air emissions consolidation from multiple facilities (expanded from current regulations) (§§ 550.303 and 550.304; 6,626 hours, $1,000,000 non-hour costs for modeling). This subpart would also add the requirements associated with emission reduction measures, including but not limited to the BACT (§§ 550.306 through 550.310; 682 hours), as well as monitoring and reporting requirements, including the collection of data and maintenance of fuel logs (§§ 550.311 through 550.314; 17,986 hours, $2,455,000 non-hour costs); and general departure information (§§ 550.300 through 550.314; 10 hours). The proposed rule would create new subpart C with a total burden of 25,304 hours and $3,455,000 non-hour costs.

BURDEN TABLE

[Current requirements in regular font; *expanded* requirements shown in *italic font;* **new** requirements shown in **bold** font]

Citation 30 CFR part 550 subpart A and related NTLs	Reporting and recordkeeping requirement **	Hour burden	Average number of annual responses	Annual burden hours
Per the requirements in this rule, you must submit information in an electronically readable format unless otherwise directed by BOEM. If you transmit the information electronically, you must use a delivery medium or transmission method authorized by BOEM				
Information and Reporting Requirements				
141*(d)*	Request approval to use new or alternative procedures*; temporarily suspend equipment or implement operational control(s);* submit required information.	Burdens currently covered under 30 CFR part 550, subpart A (1010–0114)		0
160*(f)*	*Submit all air quality documentation/records pertaining to RUE applications; obtain approvals.*	*11*	*26 applications*	*286*
160*(f)*	*Request waiver of 10-year periodic review for RUEs from Regional Supervisor.*	*.50*	*2*	*1*
New 187*	Entities in all affected OCS Regions collect, maintain, retain for 10 yrs., and all air emissions-related data for each source that generates air pollutants on the OCS.	**43+**	**2,547 submissions**	**112,025**
New 187(b)*	Request third-party submission of required air emissions data to BOEM or BOEM-designated agent.	**2**	**200 requests**	**400**
Total for Subpart A			**2,775**	**112,712**

Citation 30 CFR 550 subpart B and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Contents of Exploration Plans				
200–206; 209*; 215(e);* 231(b); 232(d); 234; 235*;* 281(d)(3); 283; 284; 285; NTL 2010 N–06.	Submit amended, modified, revised, supplemental, *or updated* EP, or resubmit disapproved EP; withdraw an EP.	Burdens currently covered under 30 CFR 550, subpart B (1010–0151)		0

Citation 30 CFR 550 subpart B and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
New 205	Collect, maintain & submit all air quality & modeling documentation/records (including but not limited to, emissions sources, factors, reduction measures, attributed and projected emissions, distance calculations, etc.); additional documentation as requested/required by BOEM; request departures; obtain approvals.	**20**	**110 changed plans**	**2,200**
200–206; 209; 211 through 228; NTL 2010–N–06.	Submit EP and all required information (including, but not limited to, submissions required by BOEM *forms 0137, 0138, 0142;* withdrawals; lease stipulations; reports; H_2S; Geological and Geophysical (G&G); etc.); provide notifications.	Burdens currently covered under 30 CFR part 550, subpart B (1010–0151)		0
New 205	Submit expanded air emissions & compliance data for EPs whose air emissions are above the exemption threshold. *Burdens for analysis/modeling covered under 30 CFR part 550, subpart C (§§ 550.303–550.307).*			
	Collect, maintain & submit all air quality & modeling documentation/records (including but not limited to, emissions sources, factors, reduction measures, attributed and projected emissions, distance calculations, etc.); additional documentation as requested/required by BOEM; request departures; obtain approvals.	**25**	**20 plans**	**500**
	Alaska Region submits air quality information as required in EP.	**200**	**2 Alaska plans**	**400**
Subtotal			**132**	**3,100**
Contents of DPP and DOCD				
Current 200–206; 209; 266(b); 267(d); 272(a); 273; 281(d); 283(a–b); 284; 285(a–b); NTL 2010 N–06.	Submit amended, modified, revised, updated, or supplemental DPP or DOCD, or resubmit disapproved DPP or DOCD.	Burdens currently covered under 30 CFR part 550, subpart B (1010–0151)		0
New 205	Collect, maintain & submit all air quality & modeling documentation/records (including but not limited to, emissions sources, factors, reduction measures, attributed and projected emissions, distance calculations, etc.); additional documentation as requested/required by BOEM; request departures; obtain approvals.	**20**	**155 changed plans**	**3,100**
200–206; 209; 241 thru 262; NTL 2010 N–06, and others.	Submit DPP/DOCD and accompanying/supporting information (including, but not limited to, submissions required by BOEM *Forms 0137, 0139, 0142* used in GOM; lease stipulations; withdrawals, etc.); provide notifications.	Burdens currently covered under 30 CFR part 550, subpart B (1010–0151).		0
New 205	Submit expanded air emissions & compliance data for DPPs/DOCDs whose air emissions are above the exemption threshold. *Burdens for analysis/modeling covered under 30 CFR part 550, subpart C (§§ 550.303–550.307).*	**25**	**50 plans**	**1,250**
	Collect, maintain & submit all air quality & modeling documentation/records (including but not limited to, emissions sources, factors, reduction measures, attributed and projected emissions, distance calculations, etc.); additional documentation as requested/required by BOEM; request departures; obtain approvals.			
	Alaska Region submits air quality information as required in DPP/DOCD.	**400**	**2 Alaska plans**	**800**
284	Submit updated information on activities conducted under approved EPP/DPP/DOCD/*RUE*.	*4*	*56 updates*	*224*
Subtotal			**263**	**5,374**

Citation 30 CFR 550 subpart B and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Total Subpart B			395	8,474

Citation 30 CFR 550 subpart C and related NTL(s)	Reporting and recordkeeping requirement	Non-hour costs		
		Hour burden	Average number of annual responses	Annual burden hours
Air Quality Analyses in Plans				
New 303–307	Conduct required analysis & modeling for expanded air emissions for those criteria & major precursor air pollutants that exceed the threshold & compliance requirements. Submit modeling reports.	**38**	**87 plans**	**3,306**
		$10,000 × 20 instances for incremental modeling/analysis cost of mobile sources = $200,000 $20,000 × 40 instances for additional plans that will now require modeling/analysis = $800,000 $50,000 × 0 instances for plans now requiring photochemical modeling/analysis = no costs till 2020		**$1,000,000**
New 303(d)	Report/consolidate air emissions data from multiple facilities if required.	**20**	**15 consolidations**	**300**
New 303(g); 310(c); 312(b)	Submit revised air emissions plans, as required. Request exceptions; obtain approvals.	Burdens currently covered under 30 CFR part 550, subpart B (1010–0151).		0
New 303(h)	Provide additional information/analysis as required for plan approval.	**10**	**300 submissions**	**3,000**
New 304	Obtain approval of all modeling protocols & meteorological data sets. Provide BOEM with copies of/access to protocols & all required information.	**5**	**4 submissions**	**20**
Subtotal			**406**	**6,626**
			$1,000,000 Non-hour Costs	
Emission Reduction Measures—BACT				
New 306; 307; 308(a); 309(a), (c), (d).	Document results of ERM analysis. Provide description of BACT proposal/data based on required analyses, associated impacts and costs; demonstrating compliance; provide additional information as required; obtain approval; Submit ECE data from manufacture.	**50**	**12 submissions**	**600**
New 307(a); 313(a)	Request VOCs or NO_X waiver for ERM	**1**	**1**	**1**
New 308(b); 309(a)	Request reconsideration of BOEM emissions determination; submit supporting information.	Not considered IC as defined in 5 CFR 1320.4(a)(2).		0
New 309(b)	Immediately notify BOEM if ERM become disabled or unavailable; request extension for ERM (NTE 90 days).	**2**	**2 notifications**	**4**
New 309(d)	Collect and maintain monthly logs of relevant meter/monitoring equipment readings.	**12/yr.**	**6**	**72**
New 309(e)	Notify appropriate State air quality control jurisdiction of proposal to acquire emissions offsets; revise State Implementation Plan to include new info; submit to BOEM.	**1**	**1 notification**	**1**
New 310(b)	Request a departure from compliance with the new or revised AAQSB.	**2**	**2 requests**	**4**
New 310(c)	Resubmit plans for air quality review every 10 years w/required information.	There will be no burden until 2020		0
Subtotal			**24**	**682**

Citation 30 CFR 550 subpart C and related NTL(s)	Reporting and recordkeeping requirement	Non-hour costs		
		Hour burden	Average number of annual responses	Annual burden hours
		Monitoring & Reporting		
New 311(a), (b), (f)	Report/demonstrate actual emissions data/other information to verify compliance with previous approved plan on BOEM approved schedule.	16	12 submissions	192
New 311(c)	Measure actual emissions using Predictive Emission Monitoring System (PEMS).	36	30 engines	1,080
		$26,000 × 30 engines = 780,000 annually		
New 311(c)	Report data/information regarding exceedance of projected emissions to BOEM.	16	5	80
New 312(b), (d);	Submit additional information as required to BOEM	2	10 submissions	20
New 312(a)	Conduct/report stack testing results every 3 yrs	48	67 tests	3,216
		$25,000 × 67 stack tests = $1,675,000 annually		
New 312(b)	Retain monthly fuel information for each source on determined schedule for 10 yrs.	48	265	12,720
New 312(b)	Submit fuel logs or collect facility and equipment usage information for MSCs to BOEM.	8	80	640
New 312(c), (d)	Collect/report meteorological data in a manner described by BOEM or from agreed location; other information as required.	4	3	12
New 313(b)	Submit new air quality plan for short-term facility converted to a long-term facility.	10	2 submissions	20
New 313(b)	Request exception due to adverse weather conditions or circumstances beyond your control.	.50	4	2
New 314	Provide pollution data to State, Indian Tribe, or federal agency requests submit additional info. for determination to any cause/contribution to NAAQS violation within 120 days or a longer time specified by BOEM.	2	2 requests	4
Subtotal			480	17,986
			$2,455,000 Non-hour Costs	
		General		
New 300–314	General departure and alternative compliance/requests not specifically covered elsewhere in subpart C.	2	5 requests	10
Subtotal			5	10
Total for Subpart C.			915	25,304
			$3,455,000 Non-Hour Costs	

Citation 30 CFR 550 subpart J and related	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1012	Collect, maintain & submit all air quality documentation/records pertaining to pipeline ROW applications; obtain approvals..	Burden covered under 30 CFR part 550, subparts B and C.		0
Total Burden			4,085	146,490
			$3,455,000 Non-Hour Costs	

* The requirements and burdens added to 30 CFR part 550, subpart A, are not entirely new; they are in current 30 CFR part 550, subpart C. This rulemaking moves those requirements to subpart A.

** In the future, BOEM will be allowing the option of electronic reporting for certain requirements.

+ Exact numbers of responses and annual burden hours were approved by OMB January 2015; numbers are from ROCIS.

BOEM uses the information collected under subparts A, B, and C to ensure operations on the OCS are carried out in a safe and environmentally sound manner, do not interfere with the rights of other users, and balance the protection and development of OCS resources.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burden. We specifically solicit comments on the following questions:

(1) Is the proposed collection of information necessary for BOEM to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the proposed collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the IC burden on those who must respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) Total capital and startup cost component; and, (2) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased (1) before October 1, 1995; (2) to comply with requirements not associated with the IC; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by May 5, 2016. This does not affect the deadline for the public to comment to BOEM on the proposed regulations. If you wish to comment on the IC aspects of this proposed rule, you may send your comments by email directly to OMB (*OIRA_submission@omb.eop.gov*) or by fax 202–395–5806, with a copy to BOEM (see the **ADDRESSES** section).

Please reference Air Quality, 30 CFR part 550, subparts A, B, and C (Proposed Rulemaking) in your comments. To see a copy of the IC request, with the draft proposed forms, submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently under Review). You may also obtain a copy of the supporting statement and draft forms for the new collection of information by contacting Nicole Mason, the Bureau's Information Collection Clearance Officer, by mail at 45600 Woodland Rd., Sterling, VA 20166, by email at *Nicole.Mason@boem.gov*, or by phone at (703) 787–1025.

3. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires agencies to analyze the economic impact of proposed regulations when a significant economic impact on a substantial number of small entities is likely and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. In addition, the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, requires agencies to produce compliance guidance for small entities if the rule has a significant economic impact. For the reasons explained in this section, BOEM has concluded that the proposed rule would likely not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis is not required. This Initial Regulatory Flexibility Analysis (IRFA) assesses the impact of the proposed rule on small entities, as defined by the applicable Small Business Administration (SBA) size standards. The IRFA can be found in the Initial Regulatory Impact Analysis (IRIA) within the docket for this rulemaking. The IRFA assesses the impact of the proposed rule on small entities, as defined by the applicable SBA size standards.

Based on this initial analysis, BOEM expects the implementation of this proposed rule may have a significant economic impact on a substantial number of small entities under 5 U.S.C. 605(b). BOEM, however, is seeking comments on the IRIA to inform its analysis and conclusions regarding the degree to which this rule may have an economic impact on such entities.

As defined by the SBA, a small entity is one that is "independently owned and operated and which is not dominant in its field of operation." The definition of small business varies from industry to industry in order to properly reflect industry size differences. The proposed rule would affect operators and holders of BOEM-issued oil and gas leases that are seeking to explore, develop or transport OCS oil and gas resources. BOEM's analysis shows that this could include about 130 companies with active operations. Entities that operate under this rule fall under the SBA"s North American Industry Classification System codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells) or 237120 (Oil and Gas Pipeline and Related Structures). For these codes, a small company is defined as one with fewer than 500 employees. A small entity is one that is "independently owned and operated and which is not dominant in its field of operation." Based on this criterion, approximately 90 (69 percent) of the 130 companies operating on the OCS are considered small and the remaining are considered large businesses.

Of the approximately 130 operators, a total of 56 companies submitted initial, revised, or supplemental exploration/development plans during calendar year 2013. Twenty-four large companies submitted 63 percent of the plans and thirty-two small companies submitted 37 percent of the plans. Operators not submitting exploration or development plans typically are continuing existing operations or hold leases undergoing geological and geophysical exploration.

Submitting an exploration or development plan is a necessary step before companies explore for hydrocarbons on the OCS or develop an economic prospect. All companies operating on the OCS including small entities must be well capitalized to undertake these multi-million or multi-billion dollar projects. The incremental cost for providing additional or consolidated air quality information for exploration plans, DOCDs or DPPs, ROWs or RUEs is a small cost in the context of an exploration or development project. Most of the compliance costs imposed as a result of this rulemaking are variable costs directly dependent on the complexity and number of plans submitted. Emission reduction measure costs would be directly related to the impact a project may have on a State's air quality. BOEM's first-order estimate for the rulemaking's small entity compliance costs is proportional to the number of plans submitted excluding ERM costs.

The compliance costs from this rulemaking may be less for most small entities because these companies are less likely to operate the large projects that employ multiple MODUs drilling concurrently. If a facility or project is located close to the federal/State submerged lands boundary, shows emissions above the SILs in a non-attainment area and is operated or owned by a small entity, this proposed rule could have an economic impact. The GOM shelf is a mature hydrocarbon environment and few companies are initiating new exploration or development projects. However, the GOM shelf is where most of the small entities operate and hold leases. While most of the compliance costs would be imposed on lessees and operators of large deepwater projects, some near-shore projects may be impacted.

Using 2013 as a base, small companies submit about 37 percent of the plans each year and are expected to incur approximately the same proportion of costs. The incremental first year compliance costs for this rulemaking are projected to be $23 million and the peak year is $49 million. Some of those costs are for ERM or emissions credits on a very small number of projects which may or may not be owned or operated by small entities. The modeling, reporting and other costs range from $7 to $28 million each year and small entities operating in the GOM are estimated to incur a similar proportion (37 percent) of costs in each subsequent year. As described in more detail in the Executive Summary to the Regulatory Impact Analysis (RIA), these costs are expected to vary from approximately $3 million in the first year up to $10 million in the 10th year.

BOEM prepared an IRFA to assess the impact of the proposed rule on small entities, as defined by the applicable SBA size standards. The IRFA is prepared using conservative assumptions and seeks public comments on potential small entity impacts. This rule would only affect operators and federal oil and gas lessees that could conduct operations on the OCS. The Regulatory Flexibility Act, 5 U.S.C. 601–612, defines small entities as small businesses, small nonprofits, and small governmental jurisdictions. We have identified no small nonprofits or small governmental jurisdictions that the rule would impact.

For the reasons explained below, BOEM has concluded this rule will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis is not required.

This incremental modeling and reporting costs for this rulemaking will generally be required of both the larger deepwater projects and near-shore projects. While there are smaller companies that explore and operate in deeper water, these companies are well capitalized and the incremental compliance costs for this rulemaking are estimated to be minimal when compared to the cost of drilling a single deepwater well.

Although BOEM does not believe that the proposed rule would have a significant economic impact on a substantial number of small entities, BOEM is requesting comment on the costs and impacts of the proposed policies in this rule on small entities. We will consider all comments at the final rule stage. We specifically request comments on the compliance cost estimates as well as regulatory alternatives that would reduce the burden on small entities.

This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. The compliance cost will not materially affect the economy nationally or in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; federal, State, tribal or local government agencies; or geographic regions. This proposed rule would have minimal effects on OCS operators and is not anticipated to impact oil and gas production or the cost of fuels for consumers.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule would have a negligible economic effect on the OCS oil and gas industry. BOEM has determined that the current costs of implementation of the current USEPA standards would likely not be significant, and that any costs associated with potential future USEPA actions are too speculative for purposes of analysis.

Pursuant to section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so they can better evaluate its effects on them and participate in the rulemaking. If you believe this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, you may contact Peter Meffert, Bureau of Ocean Energy Management Office of Policy, Regulation, and Analysis at *Peter.Meffert@boem.gov* or mail to 45600 Woodland Road, Sterling, Virginia 20166; or call (703)787–1610.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman, and to the Regional Small Business Regulatory Fairness Board. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of BOEM, call 1–888–REG–FAIR (1–888–734–3247).

4. Unfunded Mandates Reform Act of 1995

This rule does not impose on State, local, or tribal governments, or the private sector an unfunded mandate of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

B. Executive Orders (E.O.) and Presidential Memorandum

1. Governmental Actions and Interference With Constitutionally Protected Property Rights (E.O. 12630) March 15, 1988

According to E.O. 12630, this proposed rule does not have significant takings implications. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights. A Takings Implication Assessment is not required.

2. Regulatory Planning and Review (E.O. 12866) October 4, 1993

The OMB has reviewed this rulemaking under section 6(a)(3) of E.O. 12866. OMB has determined this proposed rule is significant because it will potentially raise novel legal or policy issues. This rulemaking is not economically significant.

Executive Order 12866 provides the Office of Information and Regulatory Affairs (OIRA) within OMB will review all significant rules. To the extent permitted by law, each agency must, among other things: (a) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing some benefits and costs are difficult to quantify); (b) tailor its regulations to impose the least burden on society, consistent with attaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (c) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive benefits; and equity); (d) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (e) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information with which choices can be made by the public.

(1) The proposed requirements in this rule would not have an effect of $100 million or more per year on the economy. The proposed rule would alter requirements for reporting emissions in an operator's exploration or development plan. The proposed rule also would require more accurate estimating and reporting of the emissions associated with offshore operations. The compliance costs for this rulemaking primarily relate to air dispersion and photochemical grid modeling, air pollutant emissions monitoring, air quality monitoring and the implementation of emission reduction measures (including the use of emissions credits). The remaining compliance costs are for additional paperwork burden hours identified in the section of the preamble on the PRA for Operators submitting EPs and DOCDs or DPP pipeline Rights-of-Way ROW, RUE and lease term pipeline applications. BOEM estimates the industry compliance costs for activities in the first year will be $23 million, the peak year (2020) $49 million and $290 million over 10 years discounted at 3 percent. The government staffing costs are estimated to be about $1.6 million per year and $12 million over 10 years discounted at 3 percent. BOEM estimates the total first year compliance cost for both the regulated industry and the government is $23.6 million, $51 million for the peak year and over 10 years is $302 million discounted at 3 percent. Additional information on the compliance costs can be found in the rulemaking's draft RIA posted in the docket.

The qualitative benefits for the proposed regulatory changes would be the improved ability to ensure the continued development of offshore facilities does not adversely impact any State, including its human population, economy and environment, as well as the improved information BOEM and States will receive regarding the expected air quality impacts onshore and above State submerged lands from OCS exploration and development. The proposed regulatory changes will require more accurate emissions information resulting from BOEM-authorized operations in both the Arctic and GOM. This improved air emission information will better ensure BOEM only approves plans that meet the requirements of the OCSLA (43 U.S.C. 1331 *et seq.*, Pub. L. 83–212, as amended), to ensure compliance with the NAAQS to the extent that these operations do not significantly affect the air quality of any State. The proposed rule would strengthen the requirements for identifying, modeling, measuring and tracking the emissions of air pollutants. Coastal States and other stakeholders can thereby be more confident regarding the expected onshore air quality impacts from OCS oil and gas exploration and development. The additional monitoring information required for certain plans will also permit the BSEE to better assess the air quality compliance for OCS operations on a plan-by-plan basis.

Based on a consideration of the qualitative as well as quantitative factors related to the rulemaking proposal, BOEM's assessment is that it is necessary to achieve compliance with the requirements of the OCSLA and that the proposed rule's adoption would provide a net benefit to the public. The additional monitoring information required for certain plans will also permit the BSEE to better assess the air quality compliance for OCS operations on a plan-by-plan basis.

The table below summarizes BOEM's estimate of the 10-year quantifiable net benefits. BOEM has only estimated the quantified benefits of NO_X reductions. The greatest compliance cost and NO_X reduction benefits are expected for deepwater projects, especially in the Mississippi Canyon area. The quantifiable benefits are estimated to range from $8 million to $43 million per year and are attributed to the NO_X reductions due to ERMs or emissions credits on those few projects that are expected to require emission reductions. The bureau's analysis did not quantify other benefits that are too difficult to estimate in concrete fiscal terms. Additional information on the compliance costs and benefits can be found in the IRIA. Even though the quantified net benefits are negative in most years, these benefits do not reflect the full implications of the impact that the rule will have overall. First, the rule could result in the reduction of VOCs, SO_X, CO, and PM emissions if operational controls are required as a condition of BOEM plan approval that would not otherwise be employed by operators. These potential reductions have not been quantified because BOEM believes most operators will voluntarily utilize operational controls including best combustion practices due to fuel savings. Second, the rule could result in a lower rate of O_3 and PM formation onshore than those which have been quantified because there are likely to be reductions in O_3 and PM formation rates associated with non-NO_X reductions in precursor air emissions.[92] Third, the rule is necessary in order to ensure continued compliance with the mandates of OCSLA and, as such, is essential to the continued development of oil and gas resources on the OCS. Fourth, the elimination of the mandate to use BACT as an emissions control will allow lessees and operators to utilize offsets whenever they are cheaper. This unquantified benefit would directly reduce the compliance costs of this rule, as compared to the current regulations. Finally BOEM believes the other qualitative benefits referred to in the RIA, such as the potential reduction in compliance costs[93] associated with this rulemaking and the superior environmental effects of implementing offsets onshore rather than offshore, will be more than sufficient to provide on overall positive benefit and justification for this rulemaking.

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[92] In addition to reductions in the rate of O3 formation resulting from NO_X emissions reductions, there could also be reductions in the rate of O3 formation by unquantified reductions in VOCs. In addition, there could be additional reductions in the rate of PM formation that are due to unquantified reductions in non-NO_X PM precursors.

[93] Examples of this include, the ability to substitute offsets for BACT in cases where the offsets would be more cost effective and allowing offsets to be established onshore, where they are likely to be less expensive and more environmentally beneficial, rather than offshore.

ESTIMATED AD82 ANNUALIZED RULEMAKING NET BENEFITS

	Millions $, years									
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Estimated Industry Compliance Costs	$22.9	$29.9	$35.9	$49.4	$45.1	$36.6	$31.5	$31.7	$27.7	$28.4
Estimated Benefit (NO_X Reductions)	$26.5	$35.3	$43.1	$43.1	$34.3	$18.6	$8.8	$7.8	$0.0	$0.0
Estimated Net Benefit	$3.5	$5.4	$7.2	−$6.3	−$10.8	− $18.0	−$22.7	−$23.9	−$27.7	−$28.4

BOEM does not expect that the proposed regulatory changes will be unduly burdensome to industry. The proposed requirements are intended to improve BOEM's review and approval of planned operations by requiring more accurate information and better assessments of the air quality impacts from OCS oil and gas operations. While many of the proposed regulatory changes require additional information from operators, the changes are not expected to increase the incidences of mechanical BACT on OCS facilities. BOEM expects that plans usually will employ ERMs and emissions credits as a response to failing to meet exemption thresholds. Mechanical BACT emission controls or other ERMs may be required for some projects due to the proposed requirements in this rulemaking if emissions credits are not available. Other exploration or development projects may require ERMs due to changes in the USEPA 1-hour NO_X standard[94] or changes to the O_3 standard.

(2) The proposed rule would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The changes proposed in this rule would strengthen the environmental safeguards and provide additional information to BOEM and coastal States to assess potential impacts to air quality. As discussed in the E.O. 13175 Consultation and Coordination with Indian Tribal Governments section of this preamble, BOEM will hold consultation meetings in Alaska.

(3) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. BOEM has consulted with the BLM, FWS, NPS, the Forest Service of the Department of Agriculture, and the USEPA and has proposed changes to align its regulations with those of the BLM, FWS, the NPS and the USEPA where applicable. While the proposed rule would allow the use of the MARPOL emissions standards as proxies for marine diesel engine emission factors for marine engines, the USCG and the USEPA will continue to enforce any applicable emissions limits on vessels. The proposed regulatory changes would improve the information available and facilitate BLM, FWS and NPS analysis regarding the air quality impacts on Class II areas and endangered species.

(4) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(5) This proposed rule potentially raises novel legal or policy issues regarding consistency with other federal agencies or international vessel requirements. The novel legal and policy issues are the change in attributed emissions for plans as well as the proposed relocation of the compliance boundary from the shoreline to the offshore submerged lands (State seaward) boundary used for determining exemptions from more detailed air quality analysis and/or modeled compliance with NAAQS. This proposed rule formalizes the methodology for attributed emissions. The 25-mile radius traditionally used by BOEM will no longer apply; the projected emissions calculations account for all emissions supporting a plan's activity, including in certain cases support emissions from aircraft and onshore facilities.

BOEM has linked its air quality regulations, where applicable, to those of other agencies in multiple areas. Many USEPA standards have been explicitly cited and referenced. The Marine Pollution Convention (MARPOL) standards, which are covered in USEPA and USCG regulations, are incorporated. The BLM, FWS, NPS, and the Forest Service of the Department of Agriculture programs to maintain AQRVs, as part of the FLM process, have been explicitly referenced in the BOEM regulations. In addition, informal consultations have and will continue to take place with other federal and State agencies.

We have developed this proposed rule consistently with these requirements. The proposed changes in this rulemaking would update and better conform BOEM's air quality regulations to the requirements of OCSLA. The proposed air quality requirements would automatically be updated as the USEPA changes its standards with respect to which pollutants are potentially harmful and at what levels of exposure those pollutants cause harm. The proposed rule would replace various provisions in the current regulations with more comprehensive and up-to-date provisions based upon more recent science and technology. The rulemaking would better address DOI's mandate to evaluate the potential impact of any OCS development with respect to the probable impacts to most closely affected States.

3. Civil Justice Reform (E.O. 12988) February 7, 1996

This proposed rule complies with the requirements of E.O. 12988. Specifically, this proposed rule:

(a) Meets the criteria of section 3(a) requiring all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

4. Protection of Children From Environmental Health and Safety Risks (E.O. 13045) April 21, 1997

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The USEPA has determined, and BOEM agrees, that children are an at-risk group for health effects associated with exposures to certain air pollutants, including some pollutants released or formed from OCS operations.

This proposed rule addresses those air pollutants of greatest concern. BOEM welcomes additional comments on this topic and whether, or to what extent, the proposed rule addresses these relevant issues.

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[94] USEPA has issued guidance recommending a SIL for the 1-hour NO2 NAAQS, which it published at: *http://www3.epa.gov/nsr/documents/20100629no2guidance.pdf.*

This proposed rule is not an economically significant rule and does not create an environmental risk to health or a risk to safety that may disproportionately affect children.

5. Federalism (E.O. 13132) August 10, 1999

Under the criteria in E.O. 13132, this proposed rule would not have any substantial federalism implications. This proposed rule would not substantially and directly affect the relationship between the federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not have any significant effect on that role.

A separate federalism assessment is not required and has not been prepared.

6. Consultation and Coordination With Indian Tribal Governments (E.O. 13175) November 6, 2000

DOI strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and Tribal sovereignty. BOEM has evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and has determined this proposed rule would not cause a substantial direct or adverse effect on any Federally-recognized Indian tribe.

There are a number of reasons why BOEM has come to this conclusion. There are many circumstances whereby the proposed rule has strengthened the requirements for identifying, measuring and tracking the emissions of air pollutants and no circumstances in which the proposed rule would relax or lessen any existing air quality requirements or standards. The proposed rule would incorporate the various enhancements to the current BOEM air quality regulatory process, including but not limited to the following:

- The proposed rule would incorporate all key USEPA air quality standards and benchmarks by direct cross-reference. Thus, BOEM's proposed regulations would both reflect current USEPA standards and would be updated automatically in the future if a new air quality standard or benchmark were to be promulgated by the USEPA.
- The proposed rule expands the circumstances under which emissions from MSCs would be accounted for in both exploration and development plans. MSC emissions would be tracked and reported whenever a vessel would be operating in support of a regulated facility, regardless of its distance from that facility.

The proposed rule would enhance the accuracy of the evaluation of emissions from support vessels by measuring all such emissions from the point at which they occur. The proposed rule mandates all potentially significant emitters of air pollutants maintain fuel logs, which can be used to calculate their potential emissions. This proposed rule contains new provisions for mandatory stack testing or the installation of meters when the Regional Supervisor determines emissions estimates may be unreliable or inaccurate. In circumstances where a lessee or operator proposes to use equipment that is not compliant with the USEPA requirements, the proposed rule would require the lessee or operator to obtain relevant air pollutant emissions data from the equipment manufacturer or, alternately, to test the actual level of pollutants that are emitted.

The proposed rule does reflect changes Congress made with respect to the CAA when it granted Federally-recognized Indian tribes the right to regulate the air quality over their territories independently from the States. If such a tribe has been granted the authority to regulate its own air quality, by issuing air quality permits in lieu of the States, or if the tribe has implemented a tribe-wide air quality implementation plan to which new permit applicants must comply, BOEM would recognize this authority and grant the tribes the same authority as a State to appeal BOEM's approval of plans for OCS development activities. This authority would not be extended to all tribes, however, since a tribe may elect not to establish any air quality regulatory scheme. In the event that a tribe has not established its own air quality regulatory mechanism, there is no reason that it should have the same rights as a State under BOEM's regulations. Such a tribe would, of course, retain all the rights of public comment on rulemakings and to provide feedback to BOEM at public forums.

Although BOEM does not believe this proposed rule would cause any substantial direct or adverse impact to any Indian tribe, in order to inform such Indian tribe(s), DOI intends to initiate consultations with potentially affected tribe(s) on a government-to-government basis during the public comment period for this rule. BOEM will fully consider all tribal views and concerns before issuing a final rule on this topic.

7. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use (E.O. 13211) May 18, 2001

We have analyzed this proposed rule under E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" and have determined this rule is not a significant energy action under the definition in Executive Order 13211. The IRIA provides a general discussion of modeling, monitoring and emission reduction compliance costs on potentially marginal GOM development projects.

8. Enhancing Coordination of National Efforts in the Arctic (E.O. 13689) January 21, 2015

E.O. 13689 recognizes the Arctic has critical long-term strategic, ecological, cultural, and economic value, and it is imperative we continue to protect our national interests in the region, which include: National defense; sovereign rights and responsibilities; maritime safety; energy and economic benefits; environmental stewardship; promotion of science and research; and preservation of the rights, freedoms, and uses of the sea as reflected in international law.

E.O. 13689 also recognizes it is vital that federal agencies work together to enhance coordination on Arctic efforts. Pursuant to this goal, the E.O. establishes an Arctic Executive Steering Committee (Steering Committee), to provide "guidance to executive departments and agencies (agencies) and enhance coordination of federal Arctic policies across agencies and offices, and, where applicable, with State, local, and Alaska Native tribal governments and similar Alaska Native organizations, academic and research institutions, and the private and nonprofit sectors." DOI is a member of this Steering Committee.

Consistent with DOI's long-standing commitment to coordinate with other federal agencies on Artic matters, BOEM will work with the Steering Committee and other relevant agencies, including the USEPA, BSEE, FWS, NPS, BLM, and the Forest Service within the Department of Agriculture.

The E.O. also recognizes "it is in the best interest of the Nation for the Federal Government to maximize transparency and promote collaboration where possible with the State of Alaska, Alaska Native tribal governments and similar Alaska Native organizations, and local, private-sector, and nonprofit-sector stakeholders." BOEM intends to take action consistent with this objective in order to ensure the implementation of the underlying goals.

9. Improving Regulation and Regulatory Review (E.O. 13563) January 18, 2011

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further regulations must be based on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rulemaking in a manner consistent with these requirements.

Executive Order 13563 also calls for consideration regarding a regulation's impact on employment. It states, "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." An analysis of employment impacts is a standalone analysis, and these impacts are not included in the estimation of benefits and costs.

BOEM does not expect the proposed rule's compliance cost will be great enough to close operations or prevent new ones from starting. However, employment reductions are possible in related activities if operators chose to slow development due to the provisions of this rulemaking. On the other hand, actions taken to comply with this proposed rule also will create employment opportunities; for example, consulting firms specializing in air quality analysis and modeling are likely to experience increased employment demand. As more companies need to model and maintain records of their emissions, new employment opportunities in the broad field of air quality analysis will emerge. While BOEM does not anticipate that companies will adopt an emission reduction measure like post-combustion SCR, the companies that install these mitigation technologies would benefit from increased demand for their equipment.

The proposed rule is not expected to generate either large negative or positive employment impacts. On balance, there will likely be adjustments on both sides among companies directly and indirectly affected by the regulation.

As stated in E.O. 12866, to the extent permitted by law, each agency must, among other things: (1) Propose or adopt a regulation only upon a reasoned determination its benefits justify its costs (recognizing some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with attaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive benefits; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information with which choices can be made by the public. BOEM has evaluated these options and made the determination there is no alternative that meets the need for this rulemaking and the proposed rulemaking is the best alternative for addressing the important policy objectives that BOEM is pursuing.

The proposed changes in this rulemaking would better ensure that BOEM's air quality regulations conform to the requirements of OCSLA. Unlike the current regulations, the proposed air quality requirements would automatically be updated if the USEPA changed its standards as to which pollutants are potentially harmful and at what levels of exposure those pollutants cause harm. The proposed rule would replace various provisions in the current regulations with more comprehensive and up-to-date provisions based upon more recent science and technology. The rule would better address DOI's mandate to evaluate the potential impact of any OCS development with respect to the probable impacts to most closely affected States.

10. Presidential Memorandum of June 1, 1998 on Regulation Clarity

E.O. 12866 (section 1(b)(2)), E.O. 12988 (section 3(b)(1)(B)), E.O. 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, require every agency write its rules in plain language. This means that, wherever possible, each rule must: (a) Have a logical organization; (b) use the active voice to address readers directly; (c) use common, everyday words and clear language, rather than jargon; (d) use short sections and sentences; and (e) maximize the use of lists and tables.

If you feel we have not met these requirements, send your comments to *Peter.Meffert@boem.gov*. To better help BOEM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the number of any section or paragraph that you think we wrote unclearly, which section(s) or sentence(s) are too long, or the section(s) where you believe lists or tables would be useful, etc.

Public Availability of Comments

We will post all comments, including names and addresses of respondents, at *www.regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee we will be able to do so.

List of Subjects in 30 CFR Part 550

Administrative practice and procedure, Air pollutant, Air pollution, Air quality, Arctic, Attainment area, Continental shelf, Compliance, Criteria pollutants, Development plan, Development and production plan, Environmental assessments, Environmental impact statements, Environmental protection, Exploration plan, Federal lands, Federal Land Manger, Greenhouse gasses, Hazardous air pollutants, Incorporation by reference, New source review, Non-attainment area, Oil and gas exploration, Oil and gas development, Oil pollution, Oil production, Outer Continental Shelf, Ozone, Penalties, Pipelines, Precursor pollutants, Prevention of significant deterioration, Reporting and recordkeeping requirements, Sulphur.

Dated: March 11, 2016.

Amanda C. Leiter,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Ocean Energy Management, (BOEM) proposes to amend 30 CFR part 550 as follows:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for 30 CFR part 550 is revised to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 43 U.S.C. 1334.

Subpart A—General

■ 2. Revise the section heading for § 550.101 to read as follows:

§ 550.101 Applicability.

■ 3. Revise § 550.102 to read as follows:

§ 550.102 What does this part do?

(a) 30 CFR part 550 contains the regulations of the BOEM Offshore program that govern oil, gas and sulphur exploration, development and production operations on the Outer Continental Shelf (OCS). These regulations may require you, when conducting operations on the OCS, to submit plans, requests, applications, and notices, and, upon request, to submit supplemental information.

(b) The following table of general references shows where to look for information about these processes.

Table to § 550.102—Where To Find Information for Conducting Operations

For information about	Refer to
(1) Applications for permit to drill (APD).	30 CFR part 250, subpart D.
(2) Development and Production Plans (DPP) and Development Operations Coordination Documents (DOCD).	30 CFR part 550, subpart B.
(3) Downhole commingling ...	30 CFR part 250, subpart K.
(4) Exploration Plans (EP)	30 CFR part 550, subpart B.
(5) Flaring	30 CFR part 250, subpart K.
(6) Gas measurement	30 CFR part 250, subpart L.
(7) Off-lease geological and geophysical (G&G) Permits.	30 CFR part 551.
(8) Oil Spill Financial Responsibility (OSFR) coverage.	30 CFR part 553.
(9) Oil and gas production safety systems.	30 CFR part 250, subpart H.
(10) Oil spill response plans	30 CFR part 254.
(11) Oil and gas well-completion operations.	30 CFR part 250, subpart E.
(12) Oil and gas well-workover operations.	30 CFR part 250, subpart F.
(13) Platforms and structures	30 CFR part 250, subpart I.
(14) Rights-of-Use and Easement (RUE).	30 CFR part 550, subpart A.
(15) Pipelines and Pipeline Rights-of-Way (ROW).	30 CFR part 250, subpart J and 30 CFR part 550, subpart J.
(16) Sulphur operations	30 CFR part 250, subpart P.
(17) Training	30 CFR part 250, subpart O.
(18) Unitization	30 CFR part 250, subpart M.
(19) Air Quality	30 CFR part 550, subpart C.

■ 4. Revise § 550.105 as follows:

■ a. Revise the definition of "Air pollutant";

■ b. Delete the definitions of "Attainment area", "Best available control technology", and "Emission offsets";

■ c. Add a definition for "Emissions source";

■ d. Delete the definitions of "Existing facility" and "Facility";

■ e. Add a definition for "Federal Land Manager,"

■ f. Revise the definitions of "Flaring" and "Minerals";

■ g. Add a definition for "Mobile support craft";

■ h. Delete the definition of "Nonattainment area";

■ i. Add a definition for "Offshore vehicle";

■ j. Delete the definition of "Projected emissions";

■ k. Remove the definition for "Right-of-use" and add in its place a definition for "Right-of-use and easement (RUE)";

■ l. Add a definition for "State"; and

■ m. Revise the definition of "Venting".

The revisions and additions read as follows:

§ 550.105 Definitions.

* * * * *

Air pollutant means any of the following:

(1) Any criteria pollutant for which the U.S. Environmental Protection Agency (USEPA) has established primary or secondary National Ambient Air Quality Standards (NAAQS), in 40 CFR part 50, pursuant to section 109 of the Clean Air Act (CAA);

(2) Any precursor air pollutant identified by the USEPA that contributes to the formation of a criteria pollutant through a photochemical or other reaction, including, but not limited to, Volatile Organic Compounds (VOCs), ammonia (NH_3), and those criteria pollutants (CPs) that are also precursors for other CPs (such as sulphur dioxide (SO_2));

(3) any USEPA-defined Greenhouse Gas (GHG), as defined at 40 CFR 98.6, pursuant to section 111 of the CAA; and

(4) Any USEPA-defined Hazardous Air Pollutant, as defined at 40 CFR 63.2, pursuant to section 112 of the CAA.

* * * * *

Emissions source means a device or substance that emits air pollutant(s) in connection with any authorized activity described in your plan. Several emissions sources may exist on a single facility, aircraft, vessel, or vehicle. Anything that: Produces or results in the release of one or more air pollutant(s), including the flashing, flaring or venting of natural gas, involves burning any oil or well test fluids, or generates fugitive emissions, is an emissions source. Examples include, but are not limited to: Boilers/heaters/burners, diesel engines, drilling rigs, combustion flares, cold vents, glycol dehydrators, natural gas engines, natural gas turbines, pneumatic pumps, pressure/level controllers, amine units, tanks, dual fuel turbines, sources involved in mud degassing, storage tanks, well testing equipment, vessels (including support vessels, pipeline lay barges, pipeline bury barges, derrick barges), and any other equipment that could cause fugitive emissions, venting, losses from flashing, or loading losses.

* * * * *

Federal Land Manager (FLM) means the Secretary of the Department with authority over any federal Class I area or sensitive Class II area (or the Secretary's designee).

Flaring means the burning of natural gas or other hydrocarbons and the release of the associated emissions into the atmosphere. The term "flaring" is equivalent to combustion flaring (*i.e.*, burning of the gases), but is distinct from cold venting, which involves the discharge of raw pollutants into the air without burning.

* * * * *

Minerals includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced from public lands.

* * * * *

Mobile support craft (MSC) means any offshore supply vessel (OSV) as defined by the USCG in accordance with 46 U.S.C. 2101, and any ship, tanker, tug or tow boat, pipeline barge, anchor handling vessel, facility installation vessel, refueling or ice management vessel, oil-spill response vessel, or any other offshore vessel, remotely operated vehicle (ROV), or any offshore vehicle used by, or in the support of, the offshore operations described in a plan. For the purpose of evaluating air emissions, an MSC is considered a facility while temporarily attached to the seabed or connected to another facility.

* * * * *

Offshore vehicle means a type of MSC that is capable of being driven on ice and which provides support services or personnel to your facility or facilities.

* * * * *

Right-of-use and easement (RUE) means seabed use authorization, other than an OCS lease, that BOEM may grant at an OCS site pursuant to §§ 550.160 through 550.166 of this part.

* * * * *

State means any State of the United States (U.S.) extending to the limit of the State seaward boundary (SSB), as defined in 43 U.S.C. 1301(b).

* * * * *

Venting means the release of gas into the atmosphere, including though a stack without igniting it, whereby relief flows of natural gas or other hydrocarbons are directed to an unignited flare or which are otherwise discharged directly to the atmosphere. This includes gas that is released underwater and bubbles to the atmosphere.

* * * * *

■ 5. In § 550.141, add paragraphs (d) and (e) and revise the title to read as follows:

§ 550.141 May I use or be required to use alternate procedures or equipment?

* * * * *

(d) In order to protect public health, you may be required or allowed by the Regional Supervisor to temporarily suspend the use of equipment that emits air pollutants, or to implement operational control(s) on the use of such equipment, when an adjacent State or locality declares an air quality episode or emergency, provided that any such suspension or operational control(s) would not cause an immediate threat to safety or the environment.

(e) With respect to published documents cited in these regulations, including those incorporated by reference in § 550.198, the following provisions apply:

(1) In each instance, the applicable document is the one specifically referred to, including any referenced supplement or addendum, and not any other version, supplement or addendum, even if by the same author, agency or publisher. You may comply with a later edition of a specific document incorporated by reference, provided you show that complying with the later edition provides a degree of scientific or technical accuracy, environmental protection, or performance equal to or better than would be achieved by compliance with the listed edition; and you obtain the prior written approval for alternative compliance from the authorized BOEM official.

(2) In the case of USEPA documents, you may always use the most recent version approved by the USEPA.

■ 6. In § 550.160, redesignate current paragraphs (f), (g), (h) and (i) as paragraphs (g), (h), (i) and (j) respectively, and add a new paragraph (f) to read as follows:

§ 550.160 When will BOEM grant me a right-of-use and easement, and what requirements must I meet?

* * * * *

(f) If you apply for a RUE with a facility as defined in § 550.302 or you hold a RUE with such a facility, then you must submit the information required by § 550.205, except that the ten-year periodic review requirement in § 550.310(c) may be waived by the Regional Supervisor. For the purposes of this section, any provisions of those sections applicable to a lessee or operator should be read to refer equally to any RUE applicant or any holder thereof. If the RUE is approved or held as part of an existing or proposed plan, no additional air quality requirements would apply to the plan.

* * * * *

■ 7. Add § 550.187 to subpart A to read as follows:

§ 550.187 What region-wide offshore air emissions data must I provide?

(a) *OCS emissions inventory.* You, as a lessee, an operator, or a holder of a RUE or pipeline ROW (whether or not that ROW includes an accessory structure), must collect and maintain information regarding all air pollutant emissions from all emissions sources associated with your operations. You must retain this information for a period of no less than 10 years. You must submit this information to the appropriate regional office on an ongoing basis according to a schedule corresponding to the schedule for the National Emissions Inventory as established by the USEPA. If you have an emissions source that generates facility emissions that have a potential to emit (PTE) such that it would qualify as a Type A source according to USEPA's regulations in table 1 of appendix A of subpart A ("Emission Thresholds by Pollutant for Treatment as Point Source") of 40 CFR 51.50, then, beginning in either 2017 or the next reporting period after [EFFECTIVE DATE OF THE FINAL RULE], you must report this information according to the timeframes specified in 40 CFR 51.30(b).

(b) The information provided must include the emissions of or the activity data necessary to calculate the emissions of stationary emissions sources, including all facilities, and all non-stationary sources, including MSC(s) and any other non-stationary emissions source(s) of air pollutants above the OCS or above State submerged lands that operate in support of your facility or facilities, as determined by the Regional Supervisor. You may request that the owner of such non-stationary emissions source(s) provide the information to BOEM or a BOEM-designated agent, but if the owner does not provide the information, the lessee, operator, or RUE or pipeline ROW holder is still responsible for submitting the required information.

(c) As part of the information required in this section, you must submit, in a form and manner as specified by the Regional Supervisor:

(1) Your facility and equipment usage, including hours of operation at each percent of capacity for each emissions source; and/or

(2) Your monthly and annual fuel consumption showing the quantity, type, and sulphur content of fuel used for each emissions source that generates air pollutants in connection with operations on the OCS.

(3) The information provided should be at a sufficient level of detail so as to facilitate BOEM's compilation of a comprehensive OCS emissions inventory of air pollutants.

(4) You must classify the emissions according to the appropriate Source Classification Codes (SCCs) as defined by the USEPA in FIRE Version 5.0: Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants, incorporated by reference in § 550.198(b)(1)(iv).

(d) The Regional Director may waive or permit delay in compliance with the requirements of this section on a region-wide basis.

■ 8. Add § 550.198 to read as follows:

§ 550.198 Documents incorporated by reference.

(a) (1) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. In each instance, the applicable document is the one specifically referred to, including any referenced supplement or addendum, and not any other version, supplement or addendum, even if by the same author, agency or publisher. To enforce any edition other than that specified in this section, BOEM will publish a document in the **Federal Register** and the material will be available to the public. All approved material is available for inspection at the Bureau of Ocean Energy Management, Office of Policy, Regulation and Analysis, 45600 Woodland Road, Sterling, Virginia 20166 or by phone at (703) 787–1610, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or refer to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) The effect of incorporation by reference of a document into the regulations in this part is that the incorporated document is a regulatory requirement. When a section in this part incorporates all of a document, you are responsible for complying with the provisions of that entire document, except to the extent that the section which incorporates the document by reference provides otherwise. When a section in this part incorporates part of a document, you are responsible for complying with that part of the document as provided in that section. BOEM incorporated each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement or addendum cited in this section.

(b) Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Ave. NW., MS6101A, Washington, DC 20460.

(1) AP 42, Fifth Edition, Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources, January 1995, incorporated by reference at § 550.205(b.

(2) Motor Vehicle Emission Simulator (MOVES), User Guide, Assessment and Standards Division, Office of Transportation and Air Quality, EPA–420–B–14–055, July 2014, incorporated by reference at § 550.205(b).

(3) User's Guide for the Final NONROAD2005 Model, EPA420–R–05–013, December 2005 incorporated by reference at § 550.205(b).

(4) FIRE (Factor Information Retrieval System) Version 5.0: Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants, EPA 454/R–95–012, August 1995, incorporated by reference at § 550.187(c).

(c) Federal Aviation Administration (FAA), Office of Environment and Energy, (AEE–100), 800 Independence Avenue SW., Washington, DC 20591.

(1) Aviation Environmental Design Tool (AEDT) User's Guide, Version 2B, July 2015 (as amended) incorporated by reference at § 550.205(b).

(2) Aviation Environmental Design Tool (AEDT), Version 2B, AEDT Standard Input File (ASIF) Reference Guide, May 2015 (as amended) incorporated by reference at § 550.205(b).

(d) International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom, or *http://www.imo.org,* or 44–(0)20–7735–7611.

(1) Revised MARPOL (Marine Pollution) Annex VI, Regulations for the Prevention of Air Pollution from Ships, and NO_X Technical Code [NTC] 2008, 2009 edition, incorporated by reference at § 550.205(b).

(2) Revised MARPOL Annex VI, Regulations for the Prevention of Pollution from Ships ("2008 Annex VI"), incorporated by reference at § 550.205(b.

(3) NO_X Technical Code 2008, incorporated by reference at § 550.205(b).

Subpart B—Plans and Information

§ 550.200 [Amended]

■ 9. Remove the definition of "Offshore vehicle" from § 550.200:

■ 10. Add § 550.205 to read as follows:

§ 550.205 What air emissions information must be submitted with my Plan (EPs, DPPs, DOCDs, or application for a RUE, pipeline ROW, or lease term pipeline)?

All of the terms used in this section have the meaning described in § 550.302, unless defined in § 550.105. Except if excluded from the Air Quality Regulatory Program (AQRP) by paragraph (o) of this section, the requirements in this section apply to all plans, RUE, pipeline ROW, and lease term pipeline applications submitted in any area of the OCS in which the Secretary of the Interior has authority to regulate air quality on the OCS. Your plan must contain the following criteria air pollutant and major precursor air pollutant emissions information:

(a) *Emissions sources.* You must list and describe every emissions source on or associated with any facility or facilities and MSC(s) described in your plan. This includes each emissions source used during the construction, installation (including well protection structure installation), and operation of any exploration, testing, drilling (including well test flaring), development, or production equipment or facility or facilities (including every platform or manmade island included in your plan). You must account for the air pollutant emissions sources associated with all drilling operations, including workovers and recompletions, sidetracking and from pipeline construction. You must include emissions sources associated with your use of oil or gas produced from your lease. The list of emissions sources must cover the duration of the plan's proposed activities.

(1) For each emissions source, you must identify, to the extent practicable:

(i) Equipment type and number, manufacturer, make and model, location, purpose (*i.e.,* the intended function of the equipment and how it would be used in connection with the proposed activities covered by the plan), and physical characteristics;

(ii) The type and sulphur content of fuel stored and/or used to power the emissions source; and

(iii) The frequency and duration of the proposed use.

(2) For every engine on each facility, including non-road engines, marine propulsion engines, or marine auxiliary engines, in addition to the information specified under paragraph (a)(1) of this section, you must identify and provide the engine manufacturer, engine type, and engine identification, and the maximum rated capacity of the engine (given in kilowatts (kW)), if available. If you have not yet determined what specific engine will be available for you to use, you must provide analogous information for an engine with the greatest maximum rated capacity for the type of engine which you will use. If the engine has any physical design or operational limitations and you choose to base your emissions calculations on these limitations, then you must provide

documentation of these physical design or operational limitations.

(3) For engines on MSCs, including marine propulsion and marine auxiliary engines, in addition to the information specified under paragraph (a)(1) and (2) of this section, you must provide the engine displacement and maximum speed in revolutions per minute (rpm). If the specific rpm information is not available, indicate whether the rpm would be less than 130 rpm, equal to or greater than 130 rpm but less than 2,000 rpm, or equal to or greater than 2,000 rpm, based on best available information. If the actual MSC engine types needed for calculating emissions are unknown or cannot be verified, assume an MSC possessing the maximum potential emissions for the type of MSC you would typically use for your planned operations.

(4) For offshore vehicles, you must provide the information specified under paragraph (a)(1) of this section. If the actual offshore vehicle engine types needed for calculating emissions are unknown or cannot be verified, assume an offshore vehicle possessing the maximum emissions for the types of offshore vehicles you would typically use for your planned operations.

(5) For any emissions source not described above, you must provide all information needed to calculate and verify the associated emissions, such as volumes vented, volumes flared, size of tank, and number of components.

(b) *Emissions factors.* For each emissions source identified under paragraph (a) of this section, you must identify the most appropriate emissions factors used to calculate the emissions for every criteria air pollutant and major precursor air pollutant emitted by that source.

(1) *Emissions testing.* You may use actual emissions amounts as measured from emissions testing conducted on a specific emissions source, in lieu of the standards or emissions factors for that source which are described in paragraph (b)(2) of this section. However, if none of the methods in paragraph (b)(2) of this section are applicable, you must conduct stack testing on the emissions source to determine the appropriate emissions factor. The data from stack testing may be used only for the engine for which the stack testing was conducted. When determining the emission factors through testing, you must consider:

(i) *Test points and procedures.* (A) In general, test points should be devised based on actual operations as opposed to using the test points and engine loads contained in one of the various marine duty cycles. If, based on the unique circumstances of the proposed project, this is impracticable, an alternative approach for defining test points may be implemented with the approval of the Regional Supervisor. It cannot be assumed that emissions per hour or emissions per kW hour or horse-power hour from large main engines on drill ships and platforms are highest during full load or near-full load operation. The emissions factor and emission per hour or emissions per kW hour or horse-power hour for the operation that is actually expected should be determined, and the emissions under 90% load should be used only if emissions at this load are the highest and thus conservative.

(B) Testing should be done consistent with the procedures outlined in 40 CFR part 53 to the maximum extent practicable. Where the unique circumstances or requirements of the proposed operations make such procedures impracticable, alternative procedures may be implemented with the approval of the Regional Supervisor. As appropriate, you must use the General Provisions for Determining Standards of Performance for New Stationary Sources, at 40 CFR 60.8.

(ii) *Fuel.* You must ensure that the fuel used in the testing to generate the emission factors reflects the type of fuel that will be used by the engine in actual operation and that the sulphur content of the fuel is the same as that which will be used in the engine.

(2) In the event that you elect not to measure the actual emissions for any given emissions source, select an emissions factor from one of the following references (references are listed in priority order; you may use a method only if all the methods identified above it are not available):

(i) You may use the emissions factor(s) that are vendor-guaranteed or provided by the manufacturer of the specific emissions source, if available; where a manufacturer has not provided an emissions factor for the emissions source you propose to use, you may use a manufacturer's emissions factor for a similar source only if you can demonstrate to the satisfaction of the Regional Supervisor that the emissions generated by your emissions source are the same as or lower than that for which a manufacturer's emissions factor is available. If you elect to use vendor-guaranteed or manufacturer data, you must demonstrate that:

(A) The fuel used by the manufacturer to generate the emission factors reflects the type of fuel that will be used by the engine in actual operation; and,

(B) The actual engine has not been modified outside the configuration used to generate the emission factors; thus, the emission factors used in the plan must represent the actual pattern of use for that equipment in operations.

(ii) You may use emissions factors generated from source tests required by the USEPA OCS permits as BOEM emission estimates for a specific rig. If emissions factors were not generated through testing for a particular engine, emissions factors generated from a recent and similar permit engine may be used. Data from a rig from the same manufacturer, having an engine of the same model and year is generally allowed, unless the Regional Supervisor has a reason to believe that such data may not be accurate or reliable.

(iii) You may use a model or table, as appropriate, developed by the USEPA or FAA, if available and appropriate to the emissions source, and you may use the emissions factors from that model or table.

(A) For commercial marine engines operating aboard MSC, excluding vehicles and aircraft, apply emission factors based on the classification of the engine (*i.e.*, category 1, category 2, and category 3), the year the engine was manufactured, and the maximum engine power expressed in kW. Some category 3 engine emission factors are based on rpm rather than maximum engine power. Engine category, year, model, and emission factors, by kW power rating, are given in 40 CFR 1042.101 for category 1 and category 2 commercial engines and consider the useful life provisions of each engine category. Engine category, year, model, and emission factors, by rpm rating, are given in 40 CFR 1042.104 for category 3 commercial marine engines, and also consider the useful life provisions for each engine category.

(B) For non-road equipment used on the drill ships or platforms, non-road emission factors, rather than marine engine emission factors may be used. The primary source for these emission factors is the NONROAD portion of the Motor Vehicle Emission Simulator (MOVES) model (***http://www.epa.gov/otaq/models/moves/index.htm***), as incorporated by reference at § 550.198. Depending on the type of engine, the NONROAD2008A Model may also be used, as incorporated by reference at § 550.198. That model is available at ***http://www.epa.gov/otaq/nonrdmdl.htm.***

(C) For storage tanks, use the USEPA's TANKS model, or the most recent USEPA-recommended update or replacement, to generate emission factors, such as the AP 42 Compilation of Emissions Factors, Chapter VII, incorporated by reference at § 550.198.

(D) In the event that you are required to report emissions data from aircraft, use emissions factors generated by the AEDT, incorporated by reference at § 550.198, or from another appropriate model, or set of models, approved by the FAA, in the event that the AEDT does not contain emissions factors for the relevant aircraft proposed in your plan. AEDT emissions factors are available at: *http://www.faa.gov/about/office_org/headquarters_offices/apl/research/models/aedt/*.

(iv) You may use an emission factor from a published study conducted by a reputable source, such as the California Air Resources Board, a university, or research agency, if such source yields reliable emission factors or formula(s) to calculate emissions factors for certain types of engines and equipment other than for the large main engines on drilling ships and drill platforms and for locomotive-sized engines powering cranes. If an emission study is used, the study must cover representative engines, fuels, and duty cycles.

(v) For non-U.S. flagged vessels having non-USEPA-certified, MARPOL-certified marine engines, you may use the MARPOL Annex VI standards, available from the International Maritime Organization, incorporated by reference at § 550.198, or the Revised MARPOL Annex VI, Regulations for the Prevention of Pollution from Ships, incorporated by reference at § 550.198, as appropriate taking vessel flag as well as engine size into account when determining the emission factor that should apply to an engine. With respect to calculations specifically for NO_X emissions or emissions factors, any reporting must comply with the NO_X Technical Code [NTC] 2008 incorporated by reference at § 550.198. If this method is used, the plan must account for any differences in the sulphur limits of the fuel being used and the sulphur limit of the fuel used for emission testing. All fuel used by the subject drilling ships and offshore platforms must either be purchased in the U.S. or comply with applicable CAA fuel emissions requirements, unless the lessee or operator can demonstrate that it has properly accounted for any differences in emissions that may result from the use of non-U.S. fuel.

(vi) For a natural gas-powered engine of any rated capacity, or for a non-road diesel-powered engine with a maximum rated capacity less than 900 kW, or for a non-engine emissions source, you may use the appropriate emissions factor from the Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Emissions Sources, or any update thereto, incorporated by reference at § 550.198; or,

(vii) If you elect to use the methods described in paragraph (b)(2)(v) or (vi) of this section, you must take appropriate account of the deterioration in the performance of the equipment based on its age and the potential variation of the actual emissions from the standard to account for the maximum potential emissions that the emissions source may emit. Given that equipment tends to operate less efficiently over time, you should make an appropriate upward adjustment in the emissions estimates for older equipment. At any time you revise your plan, including resubmissions every ten years, you must consider the age of the equipment, adjust for any change in operating efficiency, and provide the associated emissions factors in your revised or resubmitted plan, as applicable.

(3) If the Regional Supervisor has reason to believe that any air emissions factor used in your plan is inappropriate, or new or updated information on emissions factors becomes available, the Regional Supervisor may require you to use a different emissions factor for any emissions source for any air pollutant. The Regional Supervisor may require you to perform stack testing, in accordance with paragraph (b)(1) of this section, or some other form of validation to verify the accuracy of an emissions factor.

(4) If you propose to utilize an engine or equipment that is not certified by the USEPA for use in the U.S., you may not use a USEPA emissions factor intended to apply to a certified engine or equipment. If you propose to utilize an engine or equipment that is USEPA-certified, then you must submit documentation of its certification.

(5) If your projected emissions include emissions for a U.S. flagged vessel, you must submit documentation of the USEPA-issued Certificate of Conformity for each engine on the vessel.

(6) If you propose to use any non-U.S. engine or equipment on a non-U.S. flag vessel that is not MARPOL-compliant, you may not use an emissions factor intended to apply to a MARPOL-compliant engine or equipment.

(c) *Facility emissions.* For each criteria and major precursor air pollutant, calculate the projected annual emissions for each of your facilities, the maximum 12 month rolling sum of facility emissions and the maximum projected peak hourly emissions using the following procedures:

(1) Calculate total emissions generated annually by each emissions source on or physically connected to each of the facilities described in your plan that would result from the construction, installation, operation, or decommissioning of the facility. Such calculations should be done for each year that the plan states that the operator proposes to engage in operating activities, up to ten years. This calculation should be based on the maximum rated capacity of each emissions source associated with the facility, or the capacity that generates the highest rate of emissions, and the facility's maximum potential projected annual emissions, using the methods and procedures specified under paragraphs (a) and (b) of this section.

(2) Calculate the maximum 12-month rolling sum of emissions from each emissions source on or physically connected to each facility and the maximum 12-month rolling sum of emissions from each facility that would result from the construction, installation, operation, or decommissioning of the facility. Identify the 12-month period used for this calculation. This should be the 12-month period during which your facility generates the highest amount emissions over the life of your plan.

(3) Calculate the maximum projected peak hourly emissions from each emissions source on or physically connected to each facility and the maximum projected peak hourly emissions from each facility that would result from the construction, installation, operation, or decommissioning of the facility.

(d) *Attributed emissions.* For each criteria and major precursor air pollutant, calculate the attributed projected annual emissions for each of your MSCs, the maximum 12-month rolling sum of each MSC's emissions, and the maximum projected peak hourly emissions for each MSC, using the following procedure:

(1) For each facility described in your plan, identify the MSCs that will be used to support that facility. To the extent practicable, identify the other facilities that each MSC will support.

(2) For each MSC referred to in paragraph (d)(1) of this section:

(i) An MSC that is intended to remain at sea continuously (*i.e.*, a vessel that does not typically return to port on a regular basis) should be assumed to operate on a 24-hour basis for any day the MSC operates in the waters overlying the OCS or State submerged lands.

(ii) For all other MSCs, calculate the emissions per trip, irrespective of what other facilities the MSC may also service on each trip. These emissions include all the emissions generated between the time that the MSC leaves its port or home base until it returns (*i.e.,* support emissions per trip). All calculations must be based on the maximum rated capacity or the capacity that generates the highest rate of emissions, if greater, for each emissions source on the MSC.

(3) Multiply the emissions per trip from paragraph (d)(2) of this section by the number of trips the MSC will make during the 12 month period described in paragraph (c)(2) of this section to get the total support emissions for that MSC. If the MSC will remain at sea continuously, multiply the emissions it will generate per day by the number of days that it will operate in support of your facility during the 12 month period described in paragraph (c)(2) of this section.

(4) If the MSC provides support only to your facility, then you must attribute the MSC's total support emissions to that facility.

(5) For each MSC described in paragraph (d)(1) of this section that supports multiple facilities, you may attribute the total support emissions for that MSC to your facility or you may attribute a portion of its total support emissions to your facility (*i.e.,* calculate the attributed emissions for that MSC) using the following procedure:

(i) Subtract the emissions you can document that should be reasonably allocated to other facilities from the total support emissions calculated under paragraph (d)(3) of this section for that MSC; or

(ii) If it is not practicable to use the method in paragraph (d)(5)(i) of this section, divide the total support emissions calculated under paragraph (d)(3) of this section by the lowest number of facilities that the MSC will service on a typical trip; or

(iii) Where it is not practicable to use either paragraph (d)(5)(i) or (ii) of this section, calculate the greater of:

(A) The emissions that would be generated by the MSC traveling round-trip between the port or home base and the facility; or

(B) The emissions generated by the MSC for the entire time it will operate within 25 statute miles of the facility.

(6) Calculate the sum of the emissions estimates that result from the calculation in paragraph (d)(4) or (5) of this section for every MSC identified in paragraph (d)(1) of this section. That sum represents the attributed emissions for your facility.

(7) All calculations must be based on the maximum rated capacity or the capacity that generates the highest rate of emissions for each of the relevant sources on every MSC.

(8) If BOEM questions your determination of the attributed emissions, the Regional Supervisor may require additional documentation to support your findings and may direct you to make changes, as appropriate.

(e) *Projected emissions.* For every facility described in your plan, you must identify the maximum projected emissions for each criteria and major precursor air pollutant by calculating the annual rate (for each calendar year), the maximum 12-month rolling sum, and the maximum peak hourly rate for your facility emissions under paragraph (c)(2) of this section and your attributed emissions under paragraph (d)(6) of this section.

(1) If any of your proposed facilities would be located in such a manner as to potentially constitute proximate activities with a pre-existing facility or a facility that was previously approved but not yet constructed, you must identify any such facility in your plan.

(2) If you are required to consolidate air emissions from multiple facilities, in accordance with the provisions of § 550.303(d), you must provide the projected emissions information for each facility and provide the complex total emissions for all of the consolidated activities.

(f) *Emission reduction measure(s) (ERM).* You must provide a description of all proposed ERM, including: the affected emissions source(s); the proposed emissions reduction control technologies, procedures and/or operational limits; the emission control efficiencies; the projected quantity of reductions to be achieved; and any monitoring or monitoring system you propose to use to measure or evaluate the associated emissions. You must be able to demonstrate that all ERM meet the requirements of § 550.309.

(g) *Modeling information.* If you are required to conduct any air quality modeling in support of your plan, then you must provide:

(1) Table(s) of the appropriate and relevant maximum projected air pollutant concentrations over any area(s) of any State(s), including the most affected attainment area(s) and the most affected non-attainment area(s);

(2) Table(s) of the appropriate and relevant maximum projected air pollutant concentrations over any Class I area(s), if relevant;

(3) The maximum projected concentrations resulting from the projected emissions for each of your facilities, for each criteria air pollutant and major precursor air pollutant, for the corresponding averaging time(s) (*e.g.,* 1-hour, 3-hour, 8-hour, 24-hour, annual, etc.) specified in the tables in 40 CFR 51.165(b)(2), 40 CFR 52.21(c), and 40 CFR part 50;

(4) A list of all inputs, assumptions, and default values used for modeling and justification for each, including the source and justification for the proposed meteorological information;

(5) The name and version of the model(s), and whether the model is listed on the USEPA preferred list of models in 40 CFR part 51 appendix W; and

(6) A modeling report, including the modeling results. If you have previously provided such a report and/or results of the analysis relevant to paragraphs (e) and (g) of this section to the Regional Supervisor, and the projected emissions are the same as or lower than in the previously submitted report(s) or results, you may instead provide a reference to such report and/or results.

(7) For each MSC, provide the distance from each facility described in your plan to the closest relevant home port (for MSCs other than offshore vehicles) or home base (for offshore vehicles), consistent with the maps and information you provide under § 550.224(e) or 550.256(b).

(h) *Requirements applicable to specific air pollutants—(1) Nitrogen and Sulphur Oxides (NO_X and SO_X).* Various documents cross-referenced by these regulations, refer to NO_X and NO_2 (nitrogen dioxide) or $SO_X$and SO_2 (sulphur dioxide). Whenever possible, you must utilize data or reasonable estimates for NO_X and SO_X. At a minimum, your projected emissions of NO_X must include emissions of nitrogen oxide and NO_2, and your projected emissions of SO_X must include emissions of SO_2. In the event that data on NO_X or SO_X emissions are not available, you must instead utilize data on nitrogen oxide plus NO_2 as a substitute for NOx, and SO_2 emissions as a substitute SO_X.

(2) *Particulate Matter (PM_{10} and $PM_{2.5}$).* For each emissions source, you must provide data and information on both PM_{10} (PM that is 10 micrometers or less in diameter) and $PM_{2.5}$ (PM that is 2.5 micrometers or less in diameter) whenever such information is available and evaluate each type of particulate matter (PM) separately under every applicable standard. All reporting of $PM_{2.5}$ must include the sum of filterable and condensable PM. In the event that data for PM is not separately available for both PM_{10} and $PM_{2.5}$ for any given source, you must utilize the PM_{10} data for the PM_{10} analysis and the same data for the $PM_{2.5}$ analysis. A plan that does not contain separate emission

exemption threshold and modeling analysis for each type of PM will not be considered complete.

(3) *Hydrogen Sulfide (H_2S).* All emissions of SO_X that result from the flaring of hydrogen sulfide must be included in the projected emissions of SO_X reported and analyzed as part of your plan, in accordance with the USEPA's Oil and Natural Gas Sector New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews. If your projected emissions of H_2S will potentially exceed the USEPA's Significant Emission Rate for H_2S, as defined in 40 CFR 51.166(b)(23)(i), you must report the nature and extent of these emissions and their likely impact as part of your plan.

(4) *Methane (CH_4).* Unless specifically directed to the contrary by another regulatory provision, the analysis or reporting of CH_4 emissions is not required.

(5) *Ozone (O_3).* Generally reporting is not required other than in accordance with the provisions of § 550.304(b), unless another regulatory provision specifically addresses O_3.

(6) *Lead (Pb) or Ammonia (NH_3).* Reporting of emissions for these pollutants, for any given source, is required: if there are published manufacturer specifications of emissions factors for these pollutants; or if such information is available from the USEPA or could be obtained or derived from another recognized source, such as utilizing a mass balance approach. If you intend to use a source known to emit a potentially significant amount of Pb or NH_3, then you must obtain a reasonable estimate of the associated Pb or NH_3 emissions. Zero emissions for these pollutants should be assumed in the situation where relevant data are not available and neither you nor BOEM have a reason to anticipate that the emissions could be potentially significant.

(i) *Distance calculations*—(1) *Distance from shore.* For each facility described in your plan, you must calculate and provide the distance in statute miles, as measured in a straight line from the site of the facility to the closer of:

(i) The nearest mean high water mark of a State, or, on the Pacific coast, the nearest mean higher high water mark; or

(ii) The nearest Class I area of any State.

(2) *Distance from SSB.* For each facility described in your plan, you must calculate and provide the distance in statute miles, as measured in a straight line from the site of the facility to the closest point at which the OCS borders any State, at the SSB.

(j) *Documentation.* You must collect, create, and maintain records or any data or information establishing, substantiating, and verifying the basis for all information, data, and resources used to calculate your projected emissions under this section. The emissions factors you propose to use must be documented, and any relevant certifications, citations, methods, and procedures used to obtain or develop emissions factors must be retained. You must collect and maintain all documentation pertaining to the modeling analysis under § 550.205(g), if applicable, including all references and copies of any referenced materials, as well as any data or information related to any ERM that you propose or implement. You must provide this information, unless the Regional Supervisor waives this requirement for good cause.

(k) *Compliance.* You must provide a description of how you will comply with § 550.303 when the emissions generated by your proposed plan activities exceed the respective emission exemption thresholds (EETs), calculated using the formulas in § 550.303(c). If you are subject to the requirement to monitor and report your actual emissions in accordance with § 550.311, then the description you provide must describe how you propose to monitor your emissions.

(l) *Reporting.* You must submit data and information in a format, and using the forms, as specified by BOEM. You must submit information in an electronically-readable format, unless otherwise directed by the Regional Supervisor. If you transmit the information to BOEM electronically, you must use a delivery medium or transmission method authorized by BOEM.

(m) *Additional information.* (1) If you are required to conduct modeling, and if, under § 550.305 your projected emissions would cause an increase in the concentration of any pollutant that is within 95% of any Significant Impact Level (SIL), then you must: Report the amount of emissions from aircraft or onshore support facilities as attributed emissions; and combine the impacts of aircraft and onshore support facilities emissions with the impacts of your projected emissions for the purposes of this section and for your analysis under subpart C of this part. The aircraft and support facilities for which you are required to report emissions are those described in §§ 550.224, 550.225, 550.257, and 550.258. If required to report your aircraft or onshore support facilities and those aircraft or onshore support facilities support multiple OCS facilities then you must allocate their emissions in an appropriate manner similar to that described for MSCs in § 550.205(d).

(2) The Regional Supervisor may require such additional data or information related to these sources as is necessary to demonstrate your plan's compliance with subpart C of this part, and/or applicable federal laws related to the protection of air quality within BOEM jurisdiction.

(n) *Requirements for plans to be deemed submitted.* Your plan will not be deemed submitted in accordance with the requirements of § 550.231 or § 550.266 until:

(1) All of the requirements of this section have been completed;

(2) You have completed the Ambient Air Increment (AAI) analysis, including the required BOEM forms, the modeling protocol, and the modeling results, as specified in § 550.307(b) if required; and

(3) You have completed any other analysis required by subpart C of this part.

(o) *Plans exempt from review under the AQRP.* If you can demonstrate that your facility will not generate projected emissions of any criteria or precursor air pollutant in an amount greater than the corresponding significant emissions rate limit described in the "Pollutant and Emissions Rate" table defined in 40 CFR 52.21((b)(23)(i), your plan is exempt from the AQRP requirements of this section and subpart C of this part.

■ 11. Revise § 550.211(c) to read as follows:

§ 550.211 What must the EP include?

* * * * *

(c) *Drilling unit.* (1) A description of the drilling unit and associated equipment you will use to conduct your proposed exploration activities, including a brief description of its important safety and pollution prevention features, and a table indicating the type and the estimated maximum quantity of fuels, oil, and lubricants that will be stored on the facility.

(2) For purposes of this section, the term "facility" means any installation, structure, vessel, vehicle, equipment or device that is temporarily or permanently attached to the seabed of the OCS, including an artificial island used for drilling, well completion, well-workover, or other operations.

* * * * *

■ 12. Revise § 550.212(f) to read as follows:

§ 550.212 What information must accompany the EP?

* * * * *

(f) Air emissions information required by § 550.205;

* * * * *

■ 13. Amend § 550.215 by revising paragraph (d)(2) and adding paragraph (e) to read as follows:

§ 550.215 What hydrogen sulfide (H_2S) information must accompany the EP?

* * * * *

(d) * * *

(2) If any H_2S emissions are projected to affect any location within a State in a concentration greater than 10 parts per million, the modeling analysis must be consistent with the USEPA risk management plan methodologies outlined in 40 CFR part 68.

(e) *Hydrogen sulfide.* If you propose to flare any gasses containing a potentially significant amount of H_2S, you must separately identify this activity in your plan and separately identify the resulting emissions of sulphur oxides (SO_X) as part of your projected emissions under § 550.205(e).

§ 550.218 [Removed and reserved]

■ 14. Remove and reserve § 550.218.

■ 15. Revise § 550.224(a) and (b) to read as follows:

§ 550.224 What information on support vessels, offshore vehicles, and aircraft you will use must accompany the EP?

* * * * *

(a) *General.* A description of the MSCs and aircraft you will use to support your exploration activities. The description of MSCs must estimate the storage capacity of their fuel tanks and the frequency of their visits to your facility or facilities.

(b) *Air emissions.* See § 550.205.

* * * * *

■ 16. Revise § 550.225(b) to read as follows:

§ 550.225 What information on the onshore support facilities you will use must accompany the EP?

* * * * *

(b) *Air emissions.* A description of the emissions source, the frequency and duration of its operation, and the types of air pollutants likely to be emitted by the onshore support facilities you will use. Except as required under § 550.205(m), the amount of air pollutants emitted need not be reported. You do not need to report this information for any onshore support facility if the facility is permitted under the CAA or if you can identify another agency to which this emissions information from the facility was submitted.

* * * * *

■ 17. Revise paragraphs § 550.241(c) and (d) to read as follows:

§ 550.241 What must the DPP or DOCD include?

* * * * *

(c) *Drilling unit.* A description of the drilling unit and associated equipment you will use to conduct your proposed development drilling activities. Include a brief description of its important safety and pollution prevention features, and a table indicating the type and the estimated maximum quantity of fuels and oil that will be stored on the facility. For the purpose of this section, the term facility means any installation, structure, vessel, vehicle, equipment or device that is temporarily or permanently attached to the seabed of the OCS, including an artificial island used for drilling, well completion, well-workover, or other operations.

(d) *Production facilities.* A description of the production platforms, satellite structures, subsea wellheads and manifolds, lease term pipelines (see definition at § 550.105), production facilities, umbilicals, and other facilities you will use to conduct your proposed development and production activities. Include a brief description of their important safety and pollution prevention features, and a table indicating the type and the estimated maximum quantity of fuels and oil that will be stored on the facility. For the purpose of this section, the term facility means a vessel, a structure, or an artificial island used for drilling, well completion, well-workover, or other operations or used to support production facilities.

* * * * *

■ 18. Revise § 550.242(g) to read as follows:

§ 550.242 What information must accompany the DPP or DOCD?

* * * * *

(g) Air emissions information required by § 550.205;

* * * * *

■ 19. Amend § 550.245 by revising paragraph (d)(3) and adding paragraph (e) to read as follows:

§ 550.245 What hydrogen sulfide (H_2S) information must accompany the DPP or DOCD?

* * * * *

(d) * * *

(3) If any H_2S emissions are projected to affect any location within a State in a concentration greater than 10 parts per million, the modeling analysis must be consistent with the USEPA risk management plan methodologies outlined in 40 CFR part 68.

(e) *Hydrogen sulfide.* If you propose to flare any gasses containing a potentially significant amount of hydrogen sulfide, you must separately identify this activity in your plan and separately identify the resulting emissions of SO_X, including reporting the sulphur emissions under § 550.205(e).

§ 550.249 [Removed and reserved]

■ 20. Remove and reserve § 550.249.

■ 21. Revise paragraphs § 550.257(a) and (b) to read as follows:

§ 550.257 What information on the support vessels, offshore vehicles, and aircraft you will use must accompany the DPP or DOCD?

* * * * *

(a) *General.* A description of the MSCs and aircraft you will use to support your activities. The description of MSCs must estimate the storage capacity of their fuel tanks and the frequency of their visits to the facilities you will use to conduct your proposed development and production activities.

(b) *Air emissions.* See § 550.205.

* * * * *

■ 22. In § 550.258, revise paragraph (b) to read as follows:

§ 550.258 What information on the onshore support facilities you will use must accompany the DPP or DOCD?

* * * * *

(b) *Air emissions.* A description of the source, the frequency and duration of its operation, and the types of air pollutants likely to be emitted by the onshore support facilities you will use. Except as required under § 550.205(m), the amount of emissions of air pollutants need not be reported. You do not need to report this information for any onshore support facility if the facility is permitted under the CAA or if you can identify another agency to which emissions from the facility was submitted.

* * * * *

Post-Approval Requirements for an EP, DPP, DOCD, RUE, Pipeline ROW or Lease Term Pipeline Application

■ 23. Revise the undesignated center heading that occurs before § 550.280 to read as set out above.

■ 24. In § 550.280, revise the section heading and the introductory text of paragraph (a) to read as follows:

§ 550.280 How must I conduct activities under the approved EP, DPP, DOCD, RUE, pipeline ROW, or lease term pipeline application?

(a) *Compliance.* You must conduct all of your lease and unit activities according to your approved EP, DPP, DOCD, or RUE, pipeline ROW, or lease term pipeline application, and any approval conditions. You may not install or use any facility, equipment, vessel, vehicle, or other emissions source not described in your EP, DPP, DOCD, or RUE, pipeline ROW or lease term pipeline application, and you may not install or use a substitute for any emissions source described in your EP, DPP, DOCD, or RUE, pipeline ROW, lease term pipeline application, without BOEM prior approval. If you fail to comply with your approved EP, DPP, DOCD, or RUE, pipeline ROW, or lease term pipeline application:

* * * * *

■ 25. In § 550.284, revise the section heading, paragraph (a) introductory text, and (a)(1) to read as follows:

§ 550.284 How will BOEM require revisions to the approved EP, DPP, DOCD or application for a RUE?

(a) *Periodic review.* The Regional Supervisor will periodically review the activities you conduct under your approved EP, DPP, DOCD, or RUE application and may require you to submit updated information on your activities. The frequency and extent of this review will be based on the significance of any changes in available information, applicable law or regulation, or onshore or offshore conditions affecting, or affected by, the activities in your approved EP, DPP, DOCD, or RUE application. After 2020, any EP, DPP, DOCD or RUE application that was approved more than ten years prior must be resubmitted for air quality review in accordance with the requirements of § 550.310.

* * * * *

■ 26. Revise subpart C to read as follows:

Subpart C—Air Quality Analysis, Control, and Compliance

Sec.

550.300 [Reserved]
550.301 Under what circumstances does this subpart apply to operations in my plan?
550.302 Acronyms and definitions concerning air quality.
550.303 What analysis of my projected emissions is required under this subpart?
550.304 What must I do if my projected emissions exceed an emission exemption threshold?
550.305 How do I determine whether my projected emissions of criteria air pollutants require ERM?
550.306 What ERM are required for a short-term facility?
550.307 What ERM are required for a long-term facility?
550.308 Under what circumstances will BOEM require additional ERM on my proposed facility or facilities?
550.309 What requirements apply to my ERM?
550.310 How will revisions to the ambient air quality standards and benchmarks (AAQSB) affect my plan?
550.311 Under what circumstances will I be required to measure and report my actual emissions?
550.312 What post-approval recordkeeping and reporting is required?
550.313 Under what circumstances will BOEM impose additional requirements on facilities operating under already approved plans?
550.314 Under what circumstances will the Regional Supervisor review the projected emissions from my existing facility or facilities?

§ 550.300 [Reserved]

§ 550.301 Under what circumstances does this subpart apply to operations in my plan?

The provisions of this subpart apply to any existing facility or proposed plan involving a facility or facilities operating on, or proposed to operate on, any area of the OCS where the Secretary of the Interior has authority to regulate air emissions pursuant to section 5(a)(8) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1334(a)(8), as amended, and jurisdiction pursuant to section 328(b) of the CAA, 42 U.S.C. 7627(b), as amended, including OCS operations conducted pursuant to any plan approved under this part.

§ 550.302 Acronyms and definitions concerning air quality.

(a) Acronyms and terms used in this subpart, and in § 550.205, have the following meanings:

AAI means ambient air increment(s).
AAQSB means ambient air quality standards and benchmarks.
AEDT means aviation environmental design tool.
APD means application for a permit to drill.
AQCR means air quality control region.
BACT means best available control technology.
BLM means the Bureau of Land Management.
Btu IT means British Thermal Unit International Tables.
CAA means the Clean Air Act.
CEO means Chief Environmental Officer (BOEM)
CH_4 means methane.
CO means carbon monoxide.
CP means criteria pollutant.
CSU means column-stabilized-units.
DOCD means development operations coordination document.
DOI means the U.S. Department of the Interior.
DPP means development and production plan.
ECE means emission control efficiency.
EET means emission exemption threshold(s).
EIS means environmental impact statement.
EP means exploration plan.
ERM means emission reductions measure(s).
FAA means Federal Aviation Administration.
FLM means Federal Land Manager, which includes the heads of the U.S. Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS), Bureau of Land Management (BLM) in DOI and U.S. Forest Service in the Department of Agriculture.
FPS means floating production systems.
FPSO means floating production storage and offloading vessel.
G&G means geological and geophysical.
GHG means greenhouse gas.
hp means horsepower.
hpm means mechanical horsepower.
HPU means hydraulic power unit.
H_2S means hydrogen sulfide.
kW means kilowatt.
MARPOL means Marine Pollution Convention.
MODU means mobile offshore drilling unit.
MOVES means motor vehicle emission simulator.
MSC means mobile support craft.
NAAQS means the primary or secondary national ambient air quality standards.
NARA means National Archives and Records Administration.
NH_3 means ammonia.
NO_2 means nitrogen dioxide.
NO_X means nitrogen oxides.
O_3 means ozone.
OCS means Outer Continental Shelf.
OCSLA means Outer Continental Shelf Lands Act.
ONRR means the Office of Natural Resources Revenue
OSFR means oil spill financial responsibility.
OSV means offshore supply vessel.
Pb means lead.
PM means particulate matter.
$PM_{2.5}$ means fine particulate matter equal to or less than 2.5 micrometers in diameter.
PM_{10} means particulate matter equal to or less than 10 micrometers in diameter.
PTE means potential to emit.
ROW means rights-of-way.
Rpm means revolutions per minute.
RUE means right-of-use and easement.
SILs means significant impact levels.
SO_2 means sulphur dioxide.
SO_X means sulphur oxides.
SSB means State seaward boundary
TAS means treatment as State.
TIP means tribal implementation plan.
TLP means tension-leg platforms.
VOC means volatile organic compound.
U.S. means the United States.
USEPA means the United States Environmental Protection Agency.
$\mu g/m^3$ means micrograms per cubic meter.

(b) Terms used in this subpart have the following meanings:

Air quality control region (AQCR) means an interstate area or major intrastate area, which the USEPA deems appropriate for assessing the regional attainment and maintenance of the primary or secondary national ambient air quality standards described in 42 U.S.C. 7409, as provided under 40 CFR part 81, subpart B, Designation of Air Quality Control Regions.

Ambient Air Increments (AAIs) means the national benchmarks for Ambient Air Increments set out in the table in 40 CFR 52.21(c), as amended, or in 42 U.S.C. 7473 *et seq.*, as amended.

Ambient air quality standards and benchmarks (AAQSB) means any or all of the national ambient air quality standards and benchmarks referenced in this subpart, including the primary and secondary NAAQS defined in 40 CFR part 50; the SILs, in 40 CFR 51.165(b)(2); the AAIs, as set out in the table in 40 CFR 52.21(c).

Attainment area means, for any given criteria air pollutant, a geographic area, which is not designated by the USEPA as being a designated non-attainment area, as codified at 40 CFR part 81 subpart C (40 CFR 81.300 through 81.356). This includes areas that are referred to as attainment, maintenance, unclassifiable, or unclassifiable/attainment in that subpart, as well as areas that have not yet been designated because the two-year period to complete such designations after revision of a NAAQS has not yet passed.

Attributed emissions means, for any given criteria or precursor air pollutant, the emissions from MSC and, if appropriate, aircraft, operating above the OCS or State submerged lands, that are attributed to a facility pursuant to the methodology set forth in § 550.205(d) for the period over which the corresponding facility emissions are measured.

Background concentration means the ambient air concentration of any given criteria air pollutant that arises both from local natural processes and from the transport into the airshed of natural or anthropogenic pollutants originating locally or from another location, either as measured from an USEPA-approved air monitoring system or as determined on some other appropriate scientifically justified basis approved by BOEM.

Baseline concentration means the ambient background concentration of any given air pollutant that exists or existed at the time of the first application for a USEPA Prevention of Significant Deterioration (PSD) permit in an area subject to section 169 of the CAA, based on air quality data available to the USEPA or a State air pollution control agency and on the monitoring data provided in the permit application and as defined in 40 CFR 51.166(b)(13). The baseline concentration is distinguished from the background concentration in that the background concentration changes continually over time to reflect the current ambient air concentration for any given air pollutant, whereas the baseline concentration remains fixed until such time as a new AAI is established for an attainment area.

Best Available Control Technology (BACT) means a physical or mechanical system or device that reduces emissions of air pollutants subject to regulation to the maximum extent practicable, taking into account: The amount of emissions reductions necessary to meet specific regulatory provisions; energy, environmental, and economic impacts; and costs.

Class I area means an area designated by the USEPA, a State, or a Federally-recognized Indian tribe, where visibility and air emissions are protected by a FLM to pursuant to 42 U.S.C. 7472(a) or 7474, as amended; Class I areas include certain national parks, wilderness areas, national monuments, and areas of special national or regional natural, recreational, scenic, or historic value.

Class II area means an area designated by the USEPA, a State, or a Federally-recognized Indian tribe, that is protected pursuant to 42 U.S.C. 7472(a) or 7474, as amended, to limits less stringent than those for Class I areas. Sensitive Class II areas represent a sub-classification of Class II areas that are defined by Federal Land Management Agencies as federal lands where the protection of air resources has been prioritized, as specified in acts, regulations, planning documents, or by policy.

Complex total emissions means the sum of the facility emissions that would result from all of the facilities that have been aggregated for the purposes of evaluating their potential consolidated impact on air quality, pursuant to the methodology set forth in § 550.303(d), and the sum of all corresponding attributed emissions for those facilities.

Criteria air pollutant or criteria pollutant means any one of the principal pollutants for which the USEPA has established and maintains a NAAQS under 40 CFR part 50 in accordance with 42 U.S.C. 7409, as amended, for the protection of public health and welfare, and the environment. The USEPA has established primary standards for the protection of sensitive populations of children and the elderly and secondary standards for the protection of crops, vegetation, buildings, visibility, and prevention of harm to animals. Criteria air pollutants do not include Volatile Organic Compounds (VOCs) or any other precursor air pollutant not already regulated under the NAAQS.

Design concentration means the pollutant concentration at a given location projected, through computer-simulated air dispersion or photochemical modeling, as described under 40 CFR part 51, appendix W, section 7.2.1.1 to result from your projected emissions, combined with the background concentration for the same pollutant, averaging time, and statistical form at the most appropriate receptor location. The appropriate background concentration is measured from the nearest point at which there is data from an USEPA-approved air monitoring system, or as determined on some other appropriate scientifically justified basis approved by BOEM.

Dispersion modeling means the mathematical computer simulation of air emissions being transported from a source through the atmosphere under given meteorological conditions. Emissions from sources, expressed as the rate of air pollutants emitted over time (*i.e.*, pounds per hour), are translated through computer modeling into pollutant concentrations, expressed in units of micrograms of pollutants per cubic meter of ambient air (µg/m3), or in parts per million or billion, depending on the circumstances. When a file containing meteorological and emissions data are input into the computer model, the model will project the concentrations of the pollutants at a receptor location.

Emission control efficiency (ECE) means the effectiveness of an ERM for any given emissions source and air pollutant. The greater the emission control efficiency, the greater the effectiveness of the underlying controls (*i.e.*, measured as a percentage reduction in the underlying emissions of any given pollutant). ECE varies from 100%, representing a control that completely eliminates emissions, to zero, representing a control that has no effect on such emissions.

Emissions credits mean emissions reductions from an emissions source(s) not associated with the plan that are intended to compensate for the excessive emissions of criteria or precursor air pollutants, regardless of whether these emissions credits are acquired from an emissions source(s) located either offshore or onshore, including: Emissions offsets generated by the lessee or operator itself; or emissions offsets acquired from a third party; or trading allowances or other alternative emission reduction method(s) or system(s) associated with a market-based trading mechanism; examples include mitigation banks or other competitive markets where these assets are exchanged.

Emission exemption threshold(s) (EET) means the maximum allowable rate of projected emissions, calculated for each air pollutant, expressed as short tons per year (tpy), above which facilities would be subject to the requirement to perform modeling.

Emissions factor(s) means a value that relates the quantity of a specific pollutant released into the atmosphere with the operation of a particular emissions source. Emissions factors are usually expressed as the mass of pollutant generated from each unit (*e.g.,* mass, volume, distance, work, or duration) of activity by the emissions source emitting the pollutant.

Emission reduction measure(s) (ERM) means any operational control(s), equipment replacement(s), BACT, or emissions credit(s), applied on either a temporary or permanent basis, to reduce the amount of emissions of criteria or precursor air pollutants that would occur in the absence of such measures.

Existing facility means an operational OCS facility described in an approved plan.

Facility means, any installation, structure, vessel, vehicle, equipment, or device that is temporarily or permanently attached to the seabed of the OCS, including but not limited to a dynamically positioned ship, gravity-based structure, manmade island, or bottom-sitting structure, whether used for the exploration, development, production or transportation of oil, gas, or sulphur. All installations, structures, vessels, vehicles, equipment, or devices directly associated with the construction, installation, and implementation of a facility are part of a facility while located at the same site, attached, or interconnected by one or more bridges or walkways, or while dependent on, or affecting the processes of, the facility, including any ROV attached to the facility. One facility may include multiple drill rigs, drilling units, vessels, platforms, installations, devices, and pieces of equipment. Facilities include Mobile Offshore Drilling Unit(s) (MODU), even while operating in the "tender assist" mode (*i.e.,* with skid-off drilling units), or any other vessel engaged in drilling or downhole operations, including well-stimulation vessels. Facilities also include all Floating Production Systems (FPSs), including Column-Stabilized-Units (CSUs), Floating Production, Storage and Offloading facilities (FPSOs), Tension-Leg Platforms (TLPs), and spars. Any vessel used to transfer production from an offshore facility is part of the facility while physically attached to it. Facilities also include all DOI-regulated pipelines and any installation, structure, vessel, equipment, or device connected to such a pipeline, whether temporarily or permanently, while so connected.

Facility emissions means, for any given criteria or precursor air pollutant, the annual, the maximum 12-month rolling sum, and the peak hourly emissions from all emissions sources on or connected to a facility.

Federally-recognized Indian tribe refers to a Federally-recognized Indian tribe that has either a Treatment as State (TAS) status recognized by the USEPA or an approved TIP.

Fugitive emissions means the emissions of an air pollutant from an emissions source that do not pass through a stack, chimney, vent, or other functionally-equivalent opening.

Fully reduce(d) means to decrease emissions of VOCs to a rate that will not exceed the emission exemption threshold calculated under § 550.302, or to decrease emissions of criteria air pollutants to a rate that will not exceed the Significant Impact Levels set out in the table in 40 CFR 51.165(b)(2).

Long-term facility means a facility that has remained or is intended to remain in the same lease block or within one nautical mile of its original location for three years or longer; this three year period is measured from the time the facility is first attached to the seafloor, or another facility, and continues to run until the facility's planned operations cease, regardless of the length of time the facility remains attached to the seafloor in any given year.

Major precursor pollutant means any precursor pollutant for which the States are required to report actual emissions to the USEPA, as defined in 40 CFR 51.15(a).

MARPOL-certified engine means either:

(1) An engine with a power output of more than 5,000 kW and a per cylinder displacement at or above 90 liters installed on a ship constructed on or after January 1, 1990 but prior to January 1, 2000 that is subject to regulation 13.7 of MARPOL Annex VI; or

(2) An engine with a power output of more than 130 kW built on or after January 1, 2000 that is subject to regulations 13.1 through 13.6 of MARPOL Annex VI.

Maximum rated capacity means the maximum power an engine is capable of generating over time, expressed in kW, and if necessary, as converted from hpm (where 1 hpm of power equals 745.699872 Watts or 0.745699872 kW) or from the International Table values of British thermal units (BtuIT, where 1 BtuIT/hour of power equals 0.29307107 Watts or 0.00029307107 kW).

National ambient air quality standards (NAAQS) means the ambient air standards established by the USEPA, as mandated by the CAA (42 U.S.C. 7409), set out in in 40 CFR part 50, for the common criteria air pollutants considered harmful to public health or welfare. There are two categories of the NAAQS: Primary standards that set limits to protect public health, including the health of "sensitive" populations such as asthmatics, children, and the elderly; and secondary standards that set limits to protect public welfare when concentrations are elevated over time, including protection against visibility impairment; prevention of harm to animals, including marine mammals, fish and other wildlife; and avoidance of damage to crops, vegetation, and buildings. This term includes both categories.

Non-attainment area means, for any given criteria air pollutant, a geographic area, which the Administrator of the USEPA has designated as non-attainment for a NAAQS, as codified at 40 CFR part 81 subpart C. For the purposes of these regulations, all other areas will be considered Attainment areas.

Operational control means a process, method or technique, other than a physical or mechanical control, or equipment replacement that reduces the emissions of criteria or precursor air pollutants (*e.g.,* limitation on period of operation, load balancing, and/or use of less-polluting fuels).

Particulate matter (PM) means an airborne contaminant of particulate matter that is regulated as a criteria air pollutant under the ambient air standards. PM_{10} refers to airborne contaminants of particulates less than or equal to 10 micrometers. $PM_{2.5}$, or fine PM, is an airborne contaminant composed of particulates less than or equal to a diameter of 2.5 micrometers.

Plan means any initial, revised, modified, resubmitted, or supplemental Exploration Plan (EP), Development and Production Plan (DPP), Development Operations Coordination Document (DOCD), or application for a Right-of-Use and Easement (RUE), a Pipeline ROW, or a lease term pipeline application.

Potential to emit (PTE) means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, will be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Attributed emissions are not counted in determining a facility's PTE.

Precursor air pollutant or precursor pollutant means a compound that chemically reacts with other atmospheric gases to form a criteria air pollutant. Some precursor air pollutants are also defined as criteria air pollutants. Precursor air pollutants include VOCs, NO_X, SO_X, and NH_3.

Projected emissions means, for any given criteria or precursor air pollutant, the sum of facility's (or facilities') emissions and the corresponding attributed emissions over the specified time period, with the controlled or uncontrolled nature of the pollutants specified by the context.

Proximate activities means activities that involve or affect any of the following: The same well(s); a common oil, gas, or sulphur reservoir; the same or adjacent lease block(s); or, facilities located within one nautical mile of one another. Where a well is drilled from one facility, but production from that well will ultimately take place through a different facility, the drilling and production activities constitute proximate activities if they occur within the same twelve months.

Sensitive Class II area means a Class II area defined by an FLM agency as being federal land where protection of air resources has been prioritized, as specified in acts, regulations, planning documents, or policy.

Short-term facility means any facility that is not a long-term facility or connected to a long-term facility.

Significance level or Significant impact level (SIL) means an ambient air benchmark or limit that applies to the ambient air impact of the emissions of a criteria air pollutant, as set out in the table in 40 CFR 51.165(b)(2).

Technically feasible means a technology or methodology that: Has been demonstrated to operate successfully on the same type of emissions source as the one under review; or is available and applicable to the type of emissions source under review.

Total support emissions means, for any criteria or precursor air pollutant, the total emissions generated by an MSC that operates in support of your and any other facilities, for the 12-month period over which the corresponding facility emissions are measured. For example, for any given MSC, the total support emissions would equal the number of service trips (*i.e.*, from the port to the supported facilities) made during the relevant 12-month period multiplied by the average number of hours per service trip multiplied by the emissions per hour for all emissions source(s) on that MSC (derived from the emissions factor calculation).

§ 550.303 What analysis of my projected emissions is required under this subpart?

(a) *Establishing emission exemption thresholds.* BOEM establishes the rate of projected emissions, calculated for each air pollutant, above which facilities would be subject to the requirement to perform modeling. These EETs establish those rates of emissions below which BOEM has determined emissions would not significantly affect the air quality of any State. If your projected emissions or complex total emissions are exempt, then you will not be required to perform air quality modeling in accordance with the requirements of § 550.304 and to apply any controls, as described in §§ 550.305 through 550.307.

(b) *Calculating projected emissions.* You must compare your projected emissions, or your complex total emissions if you are required to consolidate multiple facilities under paragraph (d) of this section, with the EETs, pursuant to the following methodology:

(1) *Projected emissions.* You must calculate and report the projected emissions for each facility as set forth in § 550.205(e).

(2) *Attributed emissions.* You must calculate and report all attributed emissions for each facility as set forth in § 550.205(d).

(c) *Exempt emissions thresholds.* BOEM will establish EETs under this paragraph. These will determine whether your projected emissions or complex total emissions have the potential to significantly affect the air quality of any State.

(1) BOEM will establish new EETs based on the factors listed in this paragraph and publish them in the **Federal Register**. BOEM may establish different EETs that apply to different areas of the OCS or that apply to different kinds of emissions sources. BOEM may establish different EETs that apply to different areas of the OCS or that apply to different kinds of emissions sources. If your projected emissions for any criteria air pollutant or precursor air pollutant exceeds an EET, then you will be required to perform air quality modeling in accordance with the requirements of § 550.304 and you may be required to apply controls, as described in §§ 550.305 through 550.307, unless scientific evidence and the application of the factors set in paragraph (c)(2) of this section demonstrates otherwise.

(i) The first time that BOEM establishes a new set of EETs, BOEM will publish a notice in the **Federal Register** describing the proposed EETs and will specify the length of a corresponding comment period. At the conclusion of the comment period, BOEM will review and evaluate the comments and make a determination as to the final EETs. BOEM will publish a subsequent notice in the **Federal Register** listing the new EETs, along with a corresponding effective date for the new EETs.

(ii) Any time that BOEM determines that a revised EET should be established, BOEM will publish a notice in the **Federal Register** describing the proposed revised EET and will specify the length of a corresponding comment period. At the conclusion of the comment period, BOEM will review and evaluate the comments and make a determination as to the final EET. BOEM will publish a subsequent notice in the **Federal Register** listing revised EET, along with a corresponding effective date for the revised EET.

(iii) Until the date of the notice described in paragraph (c)(1)(ii) of this section, a facility will not be exempt under this section if its projected emissions of any pollutant exceed EETs as calculated using the following formulas:

(A) $EET = 3400 \times D^{2/3}$ for emissions of carbon monoxide (CO); and

(B) $EET = 33.3 \times D$ for emissions of each of the following: Nitrogen oxides (NO_X); SO_X; volatile organic compounds (VOCs); and PM_{10}.

Where D is the distance of the facility from the shoreline, as identified in § 550.205(i)(1).

(C) For Pb, the EET value is the level defined in 40 CFR 52.21(b)(23)(i).

(iv) Subsequent to the date of the notice, a facility will not be exempt under this section if its projected emission of any pollutant exceeds an EET published in the notice.

(v) Because the USEPA's AAQSB are subject to change as scientific knowledge improves and because modeling and evaluation techniques may improve over time, BOEM will revise EETs on an ongoing basis. Thus, as the USEPA revises the NAAQS, or any applicable SIL or AAI, BOEM, at its discretion, will periodically revise its EET formula(s) or its amount(s) for the corresponding air pollutant(s), as appropriate.

(2) BOEM will determine new EET formulas taking into account the following factors:

(i) The absolute level of projected emissions;

(ii) The distance of the proposed facility or facilities from any State or from areas critical to natural resources, animals, and habitats;

(iii) The existing ambient air pollution in potentially affected States, trend in the ambient air pollution in those States, the associated attainment status of such areas, and the associated effects to public health and welfare;

(iv) Any USEPA AAQSB applied in this part;

(v) The types, frequency, and duration of any air pollutant emissions and their formation and/or dispersion characteristics;

(vi) The characteristics of the facility or facilities and MSCs, including the type and nature of the emissions sources, and the height of the associated points or stacks;

(vii) Prevailing meteorological characteristics in any given area, including air stability, relevant wind speeds and directions;

(viii) The amount of emissions from existing facilities and vessels in the vicinity of the proposed facility; and

(ix) Other necessary and appropriate considerations.

(3) BOEM will set the EET formulas within the following ranges:

(i) The minimum values in this range are determined by the formulas in table 1 to § 550.303.

TABLE 1 TO § 550.303

Minimum value equation	Pollutant* and averaging period
$E_{min} = 0.677(d^{1.2693})$	Annual NO_X, SO_X, and PM_{10}.
$E_{min} = 0.2031(d^{1.2693})$	Annual $PM_{2.5}$.
$E_{min} = 3.3851(d^{1.2693})$	24-hr SO_2 and PM_{10}.
$E_{min} = 0.8124(d^{1.2693})$	24-hr $PM_{2.5}$.
$E_{min} = 1354(d^{1.2693})$ ..	1-hr CO.
$E_{min} = 338.51(d^{1.2693})$	8-hr CO.
$E_{min} = 16.926(d^{1.2693})$	3-hr SO_2.

Where *d* is the distance in statute miles from the State seaward boundary, as reported in your plan under § 550.205(i)(2) and E_{min} equals tons per year.

*For Pb, the minimum value amount is the level defined in 40 CFR 52.21(b)(23)(i).

(ii) The maximum values of this range are set by the following formulas:

(A) If $d \leq 3$, then $E_{max} = 7072$ for CO; and $E_{max} = 100$ for NO_X, SO_X, VOCs, and PM_{10}.

(B) If $d > 3$, then $E_{max} = 3400 \times d^{2/3}$ for CO; and $E_{max} = 33.3 \times d$ for NO_X, SO_X, VOCs, and PM_{10}.

Where *d* will be the distance of the facility from the SSB as identified in § 550.205(i)(2).

(4) If your projected emissions for any criteria air pollutant or precursor air pollutant exceeds the EETs as determined pursuant to § 550.303, then you will be required to perform air quality modeling in accordance with the requirements of § 550.304 and you may be required to apply controls, as described in §§ 550.305 through 550.307.

(d) *Consolidation of air pollutant emissions from multiple facilities.* (1) You must report the projected emissions from multiple facilities which may have been or are described in multiple plans, as the complex total emissions for your plan, if:

(i) The air pollutant emissions are generated by proximate activities (*i.e.,* the same well(s); a common oil, gas, or sulphur reservoir; the same or adjacent lease block(s); or, by facilities located within one nautical mile of one another); and

(ii) You wholly or partially own, control or operate those facilities; in the event of a dispute as to what constitutes common ownership, control or operations, BOEM will make a determination by reference to the ONRR criteria defined in 30 CFR 1206.101 and 1206.151; and

(iii) The construction, installation, drilling, operation, or decommissioning of any of your facilities occurs within a contemporaneous 12-month period as the construction, installation, drilling operation, or decommissioning of any other facility; and

(iv) Such a consolidation of emissions from multiple facilities would generate emissions sufficient to exceed an applicable emission exemption threshold (based on the exemption review described in paragraphs (e) or (f) of this section).

(2) If any two or more facilities meet all of the conditions specified in (d)(1)(i) through (iii) of this section, you must calculate the sum of the projected emissions from those facilities (including their respective attributed emissions) as the complex total emissions for your plan.

(3) BOEM will make a determination that you have appropriately considered the relevant data in your analysis of the complex total emissions.

(4) If you are required to consolidate projected emissions data from multiple facilities, then anywhere a requirement applies to projected emissions you must instead use complex total emissions, except with respect to the process by which projected emissions are determined for any given facility (as specified in § 550.205(d)).

(e) *Emissions do not exceed any threshold.* If none of your projected emissions or complex total emissions of any precursor or criteria air pollutant exceeds the applicable emission exemption threshold, then your projected emissions are *de minimis,* and no further analysis is required under this subpart.

(f) *Emissions exceed a threshold.* If your projected emissions or complex total emissions of the precursor or criteria air pollutant exceed the applicable emission exemption threshold, then further review and/or controls are required, in accordance with the provisions below:

(1) If the exceedance is for VOCs, you must control your emissions of VOCs in accordance with § 550.306, for a short-term facility, or § 550.307, for a long-term facility.

(2) If the exceedance is for any criteria air pollutant, then you must conduct modeling in accordance with § 550.304.

(3) If the exceedance is for NO_X, VOCs, or CO, and if the conditions specified in § 550.304(b) have been met, you are required to conduct photochemical modeling for O_3.

(4) If the exceedance is for NO_X, VOCs, $PM_{2.5}$, or SO_X, and if the conditions specified in § 550.304(b) have been met, you are required to conduct photochemical modeling for $PM_{2.5}$.

(g) *Changes to previously approved plans.* (1) If you change your plan implementation, such that your projected emissions, or your complex total emissions, will occur in years other than those that were previously approved, you must submit a revised plan, and that revised plan must be approved before you implement the proposed changes.

(2) If at any time you anticipate an increase in the maximum air pollutant emissions from a previously approved plan, you must submit a revised plan, pursuant to 30 CFR 550.283(a)(4).

(3) If you propose to make a change to your operations on your existing facility or facilities, but not to the equipment used in such operations, and your approved projected annual emissions in any given year are higher than those previously approved for the particular year, but lower than the maximum air pollutant emissions for any year, you do not need to submit a revised plan—as long as the operations would occur in the same year as described in the previous plan.

(4) If you propose to make a change to the equipment on your existing facility or facilities in a year or years where your plan already anticipated operations, and your proposed change would result in an increase in air pollutant emissions from that equipment for any air pollutant, you must submit a revised plan.

(5) If your plan was approved for a short-term facility that becomes a long-term facility, then you must submit a revised plan for review and approval by BOEM.

(h) *Federal land manager.* If BOEM believes that your proposed activities may affect a Class I or a Sensitive Class II area of a State:

(1) BOEM may consult with one or more relevant FLMs to determine what

effects could result from your proposed activities.

(2) BOEM will consider the views of the FLMs in determining whether your plan complies with the provisions of this subpart. Based on this consultation, BOEM may require additional information and analysis, either prior to or as a condition of approving your plan.

(3) If the FLM does not raise any concerns regarding your plan in a timely manner, BOEM will assume that the FLM has no objections to the proposed plan.

§ 550.304 What must I do if my projected emissions exceed an emission exemption threshold?

If your projected emissions or your complex total emissions exceed the limits defined in § 550.303(c) for any criteria or precursor pollutant, you must conduct modeling of that pollutant, and any other pollutant for which that pollutant is a precursor, to project the impacts of those emissions.

(a) *Dispersion models.* (1) You must use one or more of the following air dispersion models:

(i) A model approved by the USEPA, as described in appendix A to appendix W of 40 CFR part 51 (Summaries of Preferred Air Quality Models); or

(ii) A model included in the Federal Land Managers' Air Quality Related Values Workgroup Guidance; or

(iii) Another model approved by the BOEM Chief Environmental Officer (CEO).

(iv) The BOEM CEO may disapprove the use of a USEPA-approved or FLM-approved air quality model, if the CEO determines that such model would not be appropriate in the OCS context.

(2) You must follow the modeling procedures recommended in 40 CFR part 51 appendix W, to the extent possible. You must provide BOEM with a copy of your dispersion modeling protocol and the associated data and assumptions used to do your analysis before you conduct modeling.

(b) *Photochemical models.* Photochemical modeling is required only if:

(1) Your projected emissions (or your complex total emissions where applicable) for the relevant precursor air pollutants exceed an applicable EET;

(2) An appropriate photochemical air quality model is available that:

(i) Meets the USEPA's requirements of section 3.2 of appendix W to 40 CFR;

(ii) Complies with the Federal Land Managers' Air Quality Related Values Workgroup Guidance; or

(iii) Is another model approved by the BOEM CEO;

(3) BOEM has determined that adequate relevant information on background concentrations is available for the relevant location(s) in a potentially affected State(s).

(4) Upon request, you must provide BOEM with a copy of your photochemical modeling protocol and the associated data and assumptions used to do your photochemical analysis before you conduct modeling.

(c) *Projected emissions.* Base your modeling on the maximum projected emissions, as reported under § 550.205(e), or on the complex total emissions, where applicable;

(d) *Meteorology.* Apply the best available and most recent meteorological dataset, either as directed in 40 CFR part 51 appendix W, or by using an alternate dataset approved by the Regional Supervisor.

(e) *Estimates of ambient air concentrations.* For each criteria air pollutant resulting from your projected emissions (or complex total emissions where applicable), estimate the peak incremental concentrations projected in any attainment area(s) and, separately, in any non-attainment area(s), in any State (over State submerged lands or onshore), both on an annual basis and for the other averaging times specified in the appropriate USEPA regulations at 40 CFR part 50 and the tables at 40 CFR 51.165(b)(2) and 40 CFR 52.21(c).

(1) To the extent practicable, your estimate of the incremental ambient air concentrations of any criteria air pollutant must consider not only the dispersion of each criteria air pollutant itself, but also the formation of any criteria air pollutant that may result from the dispersion or presence of any relevant precursor air pollutant(s). Specifically:

(i) Any analysis of PM$_{2.5}$ must include NO$_X$, SO$_X$, VOCs, and NH$_3$

(ii) Any analysis of O$_3$ must include NO$_X$, VOCs, and CO.

(2) BOEM may provide information though a Notice to Lessees to assist lessees and operators in evaluating existing ambient air concentrations, or changes in such concentrations over time if it determines that there is an effective means of estimating ambient air quality.

(i) In the event that BOEM has established appropriate background concentration data, or baseline concentration data, for any given pollutant, at any given location and point in time, you must use the data provided by BOEM.

(ii) In the event that BOEM has not established appropriate background concentration data for any given pollutant, for any given location, and point in time, you should use the relevant data from the USEPA for the closest appropriate location, as specified by the Regional Supervisor.

(f) *Attributed emissions.* Conduct modeling of attributed emissions from those locations where the emissions are expected to occur (*i.e.,* utilizing a line, area, volume, or pseudo point source model).

(g) *Documentation and reporting.* Create a modeling report documenting all emissions sources, inputs, parameters, assumptions, procedures, methods, and results, including input and output files, and data upon which your analysis under this subpart is based, and provide BOEM with this report, copies of all data and access to any programs used in your modeling.

§ 550.305 How do I determine whether my projected emissions of criteria air pollutants require ERM?

(a) For all criteria air pollutants other than PM$_{2.5}$ and O$_3$, compare the results of the modeling described in § 550.304 with the SILs set out in the table at 40 CFR 51.165(b)(2). If the modeling results exceed a SIL for any criteria air pollutant for any averaging time, you are required to apply ERM to sources to reduce emissions only for the CPs that exceed a SIL, as specified in § 550.306 for a short-term facility, or as specified in § 550.307 for a long-term facility.

(b) For PM$_{2.5}$, you must add the results of your dispersion modeling of direct PM$_{2.5}$ emissions conducted under § 550.304(a) to the results of your photochemical modeling, if required under § 550.304(b), before you compare the results with the PM$_{2.5}$ SILs set out in the table at 40 CFR 51.165(b)(2). If this sum exceeds a SIL for PM$_{2.5}$ for any averaging time, you are required to apply ERM for a short-term facility as specified in § 550.306, or as specified in § 550.307, for a long-term facility.

(c) For O$_3$, you must add the results of your photochemical modeling, if required under § 550.304(b), to the existing background concentrations, as described under § 550.302, and determine if the sum exceeds the NAAQS for O$_3$ for any averaging time. If so, for a short-term facility, you must apply ERM as specified in § 550.306, or as specified in § 550.307 for a long-term facility.

§ 550.306 What ERM are required for a short-term facility?

(a) If any short-term facility requires ERM under § 550.303(f) for VOCs or § 550.305 for a CP, then you are required to conduct an ERM analysis to determine potential control options and their likely cost effectiveness. In conducting your ERM analysis, you must:

(1) Identify all available control technologies relevant to the emissions of the pollutant(s) for which ERM is required;

(2) Determine which of these options are technically feasible for your plan; a demonstration of technical infeasibility must be clearly documented and must show, based on physical, chemical or engineering principles, that technical difficulties would preclude the successful use of the applicable emission control technology or methodology.

(3) Rank the technically feasible control technologies by their emission control efficiencies (ECE) and determine their likely reduction of criteria air pollutant emissions (*i.e.*, absolute effectiveness), in tpy of emissions avoided;

(4) Evaluate the most effective ERM and document the results of your analysis; and

(5) Select reasonable operational controls or replacement(s) of equipment that are technically and economically feasible and that are designed to limit your facility's projected emissions to the greatest practicable extent, taking into consideration the effectiveness and the cost of implementation, for each option considered. You must demonstrate that you have chosen the most effective technically and economically feasible operational controls or replacement(s) of equipment for every pollutant requiring such controls that can be implemented cost effectively. As an alternative, you may propose an equivalent reduction through the use of emissions credits.

(6) If you can demonstrate to the satisfaction of the Regional Supervisor that no technically feasible operational controls or equipment replacement(s) can be implemented cost effectively, then;

(i) For any given pollutant, if your emissions would affect only attainment areas, no ERM will be required with respect to that pollutant beyond that which was proposed in your plan.

(ii) If your emissions affect any non-attainment area for a specific pollutant, the Regional Supervisor may require the implementation of other ERM for that pollutant in lieu of operational controls or equipment replacement(s) as a condition of approving your plan. For any proposed BACT, you must provide a description of the associated energy, environmental, and economic impacts, and other costs.

(b) Unless you demonstrate to the satisfaction of the Regional Supervisor that no technically feasible control technology can be implemented cost effectively, your plan must include:

(1) An evaluation of the ERM you select, quantifying and verifying the emission reduction measure(s) and associated cost(s);

(2) A description of how your selected operational controls or replacement(s) of equipment meet the criteria in § 550.309 for emission reduction measures; and a calculation of your revised projected emissions (or complex total emissions, where applicable), taking into account your selected operational controls or replacement(s) of equipment.

(c) Upon making a commitment to apply the appropriate operational controls or replacement(s) of equipment or other ERM in lieu of operational controls or replacement(s) of equipment, BOEM may approve your plan, provided all other applicable requirements have been met.

(d) In the event that BOEM obtains information or data that would indicate that your projected emissions may cause the NAAQS to be exceeded, the Regional Supervisor may require you to provide additional data, analysis, or modeling to demonstrate compliance with the NAAQS or may require that you implement additional ERM so that the NAAQS are not exceeded.

§ 550.307 What ERM are required for a long-term facility?

(a) *Control of emissions of VOCs from a long-term facility.* If any long-term facility requires ERM for VOCs under § 550.303(f), you must propose ERM for the facility. The extent of the ERM required depends on the attainment status of the State area affected by your projected emissions.

(1) Except as provided in paragraph (3), if all the State areas potentially affected by your projected emissions of VOCs are designated as attainment areas for O_3 and $PM_{2.5}$, then you must evaluate and propose ERM utilizing the process described for a short-term facility in § 550.306(a)(1) through (4) and consider all relevant ERM, excluding BACT. You must demonstrate in your plan that the ERM you propose, excluding BACT, will reduce the emissions of VOCs to the lowest practicable and reasonable rate, expressed in tpy. If you elect to propose BACT in lieu of an alternative ERM, you must provide a description of the associated energy, environmental, and economic impacts, and other costs.

(2) Except as provided in paragraph (a)(3) of this section, if your projected emissions of VOCs potentially affect a State coastal area designated as a non-attainment area for O_3 or $PM_{2.5}$, then you must evaluate BACT and other relevant ERM and propose ERM utilizing the process described for a short-term facility in § 550.306(a)(1) through (4). You must fully reduce the projected emissions of VOCs to a level not to exceed the EET for VOCs, as calculated for your plan in accordance with § 550.303(c). If your proposed ERM are insufficient to reduce the emissions of VOCs to a level that does not exceed the EET, you must propose and apply additional ERM until such reduction is achieved. For any proposed BACT, you must provide a description of the associated energy, environmental and economic impacts, and other costs.

(3) *VOC waiver:* If your projected emissions of VOCs potentially affect a State coastal area but you can demonstrate that your VOCs will not cause an increase, or would cause a reduction, in the formation of O_3 (*i.e.*, reduce the O_3 production efficiency), then no ERM are required for those VOCs.

(b) *Control of emissions of criteria air pollutants from a long-term facility.* If a long-term facility requires ERM for criteria air pollutants under § 550.305, then you must propose ERM and conduct modeling as specified below. The objectives of your proposal, and the extent to which additional requirements may apply, depend on the attainment status of the affected State area(s).

(1) If all State areas affected by your emissions are designated as attainment areas, then:

(i) You must consider all relevant ERM excluding BACT, utilizing the process described for a short-term facility in § 550.306(a)(1) through (4).

(ii) You must conduct modeling for all of the air pollutants set out in the table at 40 CFR 52.21(c) using the reduced projected emissions that result from your proposed ERM. If photochemical models are required under § 550.304, then you must also perform photochemical modeling and add the results of those models to the results of the subsequent model results.

(iii) You must combine the ambient air concentrations resulting from the projected emissions of each relevant CP with those emissions of the same CP from other onshore and offshore sources which contribute to the consumption of the maximum allowable increases above the baseline concentration for each pollutant and baseline area as established in 40 CFR 52.21. Compare your results with the AAIs applicable to the Class area designation of the State area set out in table 40 CFR 52.21(c).

(A) For this analysis, use the ambient air quality concentration data specified in § 550.304(e)(2).

(B) As an alternative, you may instead model only the increment-related emissions increases and decreases between the baseline date and the modeling date (using emissions inventory data) for all relevant onshore and offshore sources, combined, and then compare the resulting modeled concentration change to the appropriate increment value, without regard to ambient background concentrations.

(iv) If your projected emissions affect State areas with multiple class area designations, then you must reduce your projected emissions to meet the AAIs set out in the table in 40 CFR 52.21(c), according to the requirements for each class area.

(v) If your proposed ERM are sufficient to reduce projected emissions, such that projected concentrations do not exceed any of the AAIs, you must then conduct the analysis described in § 550.307(b)(1)(vi). If your modeling results exceed the AAIs for any given air pollutant, then you must continue to apply additional ERM to sources to reduce that pollutant until additional modeling confirms that your projected concentrations do not exceed any AAI. Having done this, you must then conduct the analysis described in § 550.307(b)(1)(vi).

(vi) You must conduct additional modeling, adding the appropriate background concentrations defined under § 550.302 and specified in § 550.304(e)(2) to your results, in order to determine the relevant design concentrations. You must compare the design concentrations for each criteria air pollutant with the NAAQS set out in 40 CFR part 50. If any of the NAAQS is exceeded for any air pollutant for any period of exposure, then you must propose additional ERM, and repeat the corresponding modeling, until you can demonstrate that your design concentrations do not exceed the NAAQS.

(2) If your emissions affect any area designated as a non-attainment area, then you must evaluate BACT and other relevant ERM utilizing the process described for a short-term facility in § 550.306(a)(1) through (4) and consider all relevant ERM, including BACT. You must reduce the ambient impact of your emissions of all criteria air pollutants to a level that does not exceed the applicable SILs at 40 CFR 51.165(b)(2). You must conduct modeling using your revised projected emissions and compare the results with the SILs. If photochemical modeling is required under § 550.304, then you must also perform additional photochemical modeling and combine the results of that modeling with the results of the subsequent dispersion models. If your results exceed any SIL for any criteria air pollutant for any averaging time, then you must apply additional ERM until additional modeling demonstrates that all projected emissions have been fully reduced so that no SIL is exceeded for any criteria air pollutant over any applicable averaging time. Having done this, you must then conduct the analysis described in § 550.307(b)(1)(vi).

(c) *Exceptions to the ERM requirement:* (1) AAIs. For any averaging time other than an annual period, a facility's projected emissions may cause an ambient impact that exceeds an applicable AAI one time during any rolling 12-month period for any given criteria air pollutant at any one location and still be considered to have fully reduced emissions.

(2) NO_X Waiver: If your projected emissions of NO_X potentially affect a State coastal area, but you can demonstrate that those emissions would not cause an increase, or would cause a reduction, in the formation of O_3 (*i.e.*, reduce the O_3 production efficiency), then no ERM are required for NO_X, unless:

(i) The potentially affected area is an attainment area for NO_X and your analysis indicates that the AAIs for NO_X would be exceeded in the absence of such ERM; or

(ii) The potentially affected area is a non-attainment area for NO_X.

(3) VOC Waiver. A VOCs waiver could apply, as described in § 550.307(a)(3).

(4) Safety exception. If the implementation of a plan under these regulations would compromise the safety of the operation of the facility, and such implementation of any air quality standards or benchmarks cannot be otherwise addressed, then BOEM may waive the requirement to apply ERM.

(d) *NAAQS requirement.* No concentration of an air pollutant may exceed the concentration permitted under any primary or secondary NAAQS.

(e) *Emissions credits.* You may propose to use emissions credits to achieve the equivalent reduction of emissions for any criteria air pollutant as an alternative to any other ERM, regardless of the attainment status of the State area affected by your potential emissions.

§ 550.308 Under what circumstances will BOEM require additional ERM on my proposed facility or facilities?

(a) *Regional Supervisor review.* You may be required to apply additional ERM, on either a temporary or permanent basis, depending on the circumstances, even though you have demonstrated compliance with the sections above, if BOEM determines that your projected emissions or, where applicable, complex total emissions, may cause or contribute to a violation of a NAAQS. The Regional Supervisor may make this determination based on:

(1) Information submitted by a State or local government, or a Federally-recognized Indian tribe;

(2) A cumulative impacts analysis conducted for an environmental impact statement (EIS) prepared to comply with the National Environmental Policy Act (NEPA);

(3) A compliance review of your proposed plan under § 550.232(b) for an EP, or § 550.267(c) for a DPP or DOCD; or

(4) The declaration by an adjacent State, or the USEPA, of an air quality emergency for a location that may be affected by air emissions generated by your operations.

(b) *Lessee's or operator's right to challenge.* You will be given notice of the Regional Supervisor's determination, as well as an opportunity to present additional information and analysis for review by the Regional Supervisor. If you present the Regional Supervisor with additional information and analysis, the Regional Supervisor will reassess whether your projected emissions, or complex total emissions, may cause or contribute to a violation of any NAAQS, and whether additional ERM will be required for your facility. The Regional Supervisor will then notify the State or local government, or Federally-recognized Indian tribe, and explain the reasons for this determination.

§ 550.309 What requirements apply to my ERM?

(a) *Sufficiency.* Your proposed ERM must be sufficient to achieve actual emissions reductions corresponding to those reported in your plan for the duration of your plan's operations under all reasonably foreseeable conditions. On a case-by-case basis, the Regional Supervisor will review your proposed ERM and make a determination whether such measures meet the applicable criteria.

(b) *Effectiveness.* You must continually ensure the effectiveness of your ERM for the duration of your plan's operations. If your measures become disabled or unavailable, you must immediately notify the Regional Supervisor and replace such ERM with others of equal or superior effectiveness within 30 days of discovering the disability or unavailability, unless the

Regional Supervisor approves an extension not to exceed 90 days.

(c) *Control efficiency.* Your proposed ERM must reflect actual ECE. You must substantiate any ECE that you project and provide sufficient evidence to justify your ECE to the satisfaction of the Regional Supervisor.

(1) Should your substantiating data indicate a range of ECE, you must utilize the more conservative estimates (*i.e.,* those that would result in lower ECE) in your analysis and modeling.

(2) ECE estimates of 100 percent are generally not acceptable, except in cases where there is clear and convincing and/or historical evidence to justify their use.

(d) *Emission reductions monitoring.* If ERM are contained in your approved plan, the Regional Supervisor may require that you provide actual emissions data and/or any other information annually that the Regional Supervisor deems necessary to verify the effectiveness of your proposed ERM or their emission control efficiency.

(1) If your plan is approved subject to the application of ERM, you must ensure that the emissions associated with each emissions source for which ERM is required complies with the emissions verification requirements of § 550.311. The Regional Supervisor may require that you install emissions measurement meters if the Regional Supervisor determines that such meters are necessary to ensure compliance with this requirement.

(2) If you propose or are required to install emissions meters or any other monitoring equipment, you must collect and maintain monthly logs of the relevant meter or monitoring equipment readings.

(e) *Emissions credits.* For emissions credits, the following requirements also apply:

(1) You must acquire your emissions credits from emissions source(s), either offshore or onshore, that affect the air quality of the same AQCR.

(2) For a CP, the emissions credits that you propose must provide a net air quality benefit for the same pollutant; for a precursor pollutant, any emissions credits that you propose must provide a net air quality benefit for that CP for which the pollutant is a precursor.

(3) You must demonstrate to the Regional Supervisor that the emissions credit you propose binds you and any other parties who agree to lower their emissions.

(4) You must also demonstrate that any emissions reductions will last for a period of time sufficient to ensure your plan's continued compliance with the provisions of this subpart. The Regional Supervisor may periodically require you to certify that the emissions reductions are still in place.

(5) Any emissions credits must reduce emissions below rates otherwise required by law;

(6) In addition to BOEM, you must notify the appropriate State air quality control jurisdiction of your proposal to acquire emissions offsets and, if necessary, its need to revise the State Implementation Plan to include the information regarding the emissions offsets you have acquired. You must provide evidence of such State notification to BOEM before you commence any operations that rely on the associated emissions credits.

(7) Emissions credits are allowed in those circumstances where BOEM can readily verify the historical emissions from the facility to be used for the emissions credit, and the emissions reduction associated with the acquired emissions credit.

(8) The approval of an emissions credit will be contingent upon receipt of proper documentation and will not be granted if such an emissions credit would require BOEM to engage in ongoing monitoring to verify continued compliance.

(9) Nothing in these regulations is intended to restrict emissions credits from being obtained and shared by multiple lessees or operators.

(f) *Emission reduction measure(s) (ERM):* Unless otherwise specified, you may employ any operational control, equipment replacement(s), BACT, or emissions credit, on either a temporary or permanent basis, to reduce the amount of emissions that would occur in the absence of such measures. Any proposed ERM will become a condition of your plan upon approval and could be required on either a permanent or temporary basis, depending on the circumstances and location of the proposed facilities.

(1) In the event that you elect or are required to apply equipment replacement on a facility as the selected form of ERM, both the method of replacement and the equipment must comply with all other applicable federal regulations.

(2) In the event that the equipment being replaced is part of an MSC subject to USCG regulation, such replacement must be implemented in such a manner as to comply with USCG regulations.

§ 550.310 How will revisions to the ambient air quality standards and benchmarks (AAQSB) affect my plan?

(a) *Review of plans.* BOEM will evaluate the air pollutant emissions data submitted in your plan for compliance with the AAQSB s in effect on the date your plan is deemed submitted.

(b) *Proposed plans.* All activities described in initial, revised, modified, and supplemental plans must comply with the AAQSB in effect on the date the plan is deemed submitted, except:

(1) If your plan was deemed submitted shortly after the effective date of a new or revised AAQSB, and you believe the immediate application of the new or revised AAQSB is impracticable or would otherwise impose an unreasonable hardship on your proposed operations, then you may request a deferral from the requirement to comply with the new or revised standard. The Regional Director will review your request and may with the concurrence of the Director grant a temporary deferral, not to exceed two years, from compliance with the new or revised AAQSB based upon a finding of impracticability or undue hardship.

(2) Upon a finding that noncompliance with a new or revised AAQSB would not significantly affect the air quality of any State, the Director may grant a departure from compliance with the revised AAQSB. The Director may condition the departure upon any requirement(s) deemed necessary to avoid causing or contributing to a violation of the NAAQS.

(c) *Approved plans.* (1) In order to ensure that your emissions remain compliant with any changes to the NAAQS, you are required to resubmit your plan for a periodic air quality review ten years after BOEM's previous approval of your plan, as further defined in paragraph (c)(2) of this section. A plan resubmitted pursuant to this provision must be updated to comply with the requirements of § 550.205 as they exist at the time of the plan resubmission, including the most current data on emissions factors and MSC emissions, and must be reevaluated against the EETs and formulas as they exist at the time of the plan resubmission. When you resubmit a plan under this provision, that plan must include estimates for the annual projected emissions for the subsequent ten years, or for however long the plan's facility or facilities would be expected to remain in operation, whichever is shorter. With respect to the emissions calculations for any given emissions source, the resubmitted plan must account for the most recent available data on the actual emissions of the relevant emission source. All of the applicable requirements of this subpart in effect on the date of resubmission apply on the same basis to a resubmitted plan as for an initial plan.

(2) In order to ensure that your emissions remain compliant with OCSLA, starting in 2020, BOEM will conduct periodic reviews of plans approved prior to the effective date of the new exemption thresholds. To accomplish this, from that year forward, you must submit the air quality component of your previously approved plan according to the following schedule, regardless of whether you have a change in emissions.

Year the plan was approved	Year in which resubmission is required
Prior to 1980	2020.
1980 through 1984	2021.
1985 through 1989	2022.
1990 through 1994	2023.
1995 through 1999	2024.
2000 through 2004	2025.
2005 through 2009	2026.
2010 through 2012	2027.
2013 through 2014	2028.
2015 through 2016	2029.
2017 through 2018	2030.
2019 through 2020	2031.
2021 through 2022	2032.
2023 and beyond	Ten years after year of approval.

(i) The plan is due to BOEM on the same month as the month in which the plan was originally approved.

(ii) For an initially approved plan, the lessee or operator is required to resubmit the plan in accordance with the table in paragraph (c)(2) of this section.

(iii) If a revised, modified, resubmitted, or supplemental plan is submitted within ten years from the date of the initial plan submittal, the new resubmission date would be ten years from the date of approval of the revised, modified, resubmitted, or supplemental plan.

(iv) If you fail to submit a revised plan as required under this section, then the previous approval of your plan is revoked. You may be subject to civil penalties or other appropriate sanctions for a regulatory violation, including the requirement to cease operations, as provided by 43 U.S.C. 1350.

§ 550.311 Under what circumstances will I be required to measure and report my actual emissions?

(a) *Compliance demonstration conditions.* Under any of the following conditions, you must demonstrate that your actual emissions have at all times and continue to be in compliance with your previously approved plan:

(1) Your plan is approved subject to the implementation of BACT or emissions credits;

(2) Any emission source on your facility uses an engine that is not certified by the USEPA consistent with the requirements of 40 CFR 1042 or 40 CFR 1043, for U.S.-flag vessels, or that is not certified to the MARPOL Annex VI Regulation 13 requirements as required by the Act to Prevent Pollution from Ships, for foreign-flag vessels operating in the U.S.

(3) The Regional Supervisor determines that your projected emissions, or complex total emissions, for any criteria or precursor air pollutant, calculated on either an annual basis or on the basis of a 12-month rolling sum, may significantly underestimate your actual emissions based either on historical data about your emissions sources or on ambient air monitoring.

(4) BOEM determines that your facility causes or contributes to an exceedance of the NAAQS in any State.

(b) *Emissions reporting requirements.*If you are required to make the demonstration described in this section:

(1) Your measurement of actual emissions must include enough of your emissions sources to ensure that the actual emissions associated with facilities and MSCs operating under your approved plan are consistent with the projected emissions approved for your plan. You must consider every source that was included in your approved plan in addition to any source that would be classified as part of your projected emissions if your plan were resubmitted under the current regulations.

(2) BOEM will consider various alternatives for reporting of relevant emissions sources. One option would be to monitor only the following key pieces of equipment:

(i) For facilities, the required monitoring and reporting of engines would typically include:

(A) Onboard facility engines;

(B) Power generation engines;

(C) Hydraulic power units (HPU) engines;

(D) Deck cranes;

(E) Cementing units;

(F) Engines with a maximum power rating exceeding 200 hp (149 kW).

(ii) For facilities, monitoring and reporting would typically exclude:

(A) Propulsion engines;

(B) Boilers and incinerators;

(C) Emergency generators;

(D) Lifeboat engines.

(iii) For MSCs the sources, monitoring and reporting would likely include:

(A) Propulsion engines;

(B) Power generation engines;

(C) Marine auxiliary engines; or,

(D) Engines with a maximum power rating exceeding 200 hp (149 kW).

(iv) MSCs monitoring and reporting would typically exclude boilers and incinerators, emergency generators, and any engines onboard science vessels, OSVs, or lifeboats.

(3) Your demonstration must reflect your actual operations on the OCS and must be based exclusively on data derived from your actual equipment and not only on the basis of ECEs or fuel logs or activity data.

(4) You must be able to demonstrate that the data submitted to BOEM under this section is consistent with any data provided to BOEM under the requirements of § 550.187.

(5) You must provide the information required for this demonstration in a manner and on a schedule determined by the Regional Supervisor.

(c) *Notification requirements.* If, on the basis of your demonstration of actual emissions, you determine at any time your actual emissions exceed your projected emissions for any pollutant you must notify BOEM and provide BOEM with the appropriate data regarding the exceedance.

(d) *Data submittal requirements.* You must submit data and information in a format, and using the forms as specified by BOEM. You must submit information in an electronically-readable format, unless otherwise directed by the Regional Supervisor. If you transmit the information to BOEM electronically, you must use a delivery medium or transmission method authorized by BOEM.

§ 550.312 What post-approval recordkeeping and reporting is required?

(a) *Stack testing.* If stack testing was used as a method to develop your emissions factors under § 550.205 or was used to develop any of the other information submitted pursuant to that section, then you must conduct the stack testing every three years and report the results, utilizing the General Provisions for Determining Standards of Performance for New Stationary Sources, Available at 40 CFR 60.8.

(b) *Fuel logs and activity data.* In order to demonstrate compliance with your plan, you must retain information on monthly fuel consumption, for each emissions source, including attributed emissions sources, showing the quantity, type, and sulphur content of fuel used; collect facility and equipment usage information, including hours of operation at each percent of capacity for each emissions source. Venting, flaring, flashing and any other release of any air pollutant emissions that would not otherwise be accounted for by fuel consumption must be reported for any emissions source that generates criteria air pollutants or precursor air pollutants in connection with OCS activities.

(1) You must retain this information for a period of no less than ten years. You must submit this information to BOEM on a schedule set by the Regional Director.

(2) If BOEM obtains the relevant data for your attributed emissions from an independent third party, then the Regional Supervisor may waive the requirement to submit fuel logs or collect facility and equipment usage information for MSCs.

(3) *Electronic Records.* Recordkeeping and reporting must be consistent with the USEPA's requirements for electronic reporting and recordkeeping requirements for new source performance standards.

(c) *Meteorological reporting.* The Regional Supervisor may require, for a period of time and in a manner approved or prescribed, that you collect and report meteorological data from any of your facilities. The Regional Supervisor may allow you to substitute facility-specific data for meteorological data derived from any other mutually agreed upon location.

(d) *Other information.* Notwithstanding any other provision within this subpart, the Regional Supervisor may require you to provide any other information within your possession, or otherwise reasonably obtainable, to support any finding or determination under this subpart.

(e) *Additional requirements imposed by other agencies.* None of the provisions of this section would prevent the imposition of additional monitoring or reporting requirements on the part of BSEE or any other federal agency.

§ 550.313 Under what circumstances will BOEM impose additional requirements on facilities operating under already approved plans?

(a) BOEM may impose additional air quality requirements on facilities operating under already approved plans if an applicable AAQSB changes or if BOEM determines:

(1) Your operations are causing or contributing to a violation of the NAAQS, either individually or in combination with any other offshore operations;

(2) Your plan was approved with either a NO_X waiver or a VOC wavier, and the air quality conditions in the affected State have changed to such an extent that your emissions of NO_X or VOCs would contribute to an increase in the ambient O_3 concentration such that the NAAQS for O_3 may be exceeded (in an attainment area), or the NAAQS for O_3 would continue to be exceeded (in an area that is non-attainment for O_3).

(3) Your plan was approved with a NO_X waiver, and the air quality conditions in the affected State have changed to such an extent that your emissions of NO_X would contribute to an increase in the ambient concentration of NO_X such that the NAAQS for NO_X may be exceeded (in an attainment area), or the NAAQS for NO_X would continue to be exceeded (in an area that is non-attainment for NO_X).

(4) Your operation is emitting unauthorized air pollutants;

(5) Your operation is creating conditions posing an unreasonable risk to public health or welfare; or

(6) Your operation is violating any applicable federal, State or tribal law related to air quality.

(b) If a plan was approved for a short-term facility that becomes a long-term facility, a new air quality plan must be submitted for the facility under the standards applicable to a long-term facility. If this reclassification resulted from adverse weather conditions, or other circumstances beyond your control, that prevented operations in your lease area, the Regional Director may grant a temporary exception for a period not to exceed the number of months that you were unable to operate.

§ 550.314 Under what circumstances will the Regional Supervisor review the projected emissions from my existing facility or facilities?

(a) A State, or a Federally-recognized Indian tribe, may request the Regional Supervisor to supply it with the air pollution data regarding an existing facility's projected emissions, when such data are needed either for the updating of the State's emissions inventory or because a State believes an existing facility's projected emissions may cause or contribute to a violation of the NAAQS.

(b) The Regional Supervisor may require you to submit air pollutant emissions data to the State, or a Federally-recognized Indian tribe, submitting such a request.

(c) The State, or a Federally-recognized Indian tribe, submitting a request may submit information to BOEM that it believes indicates projected emissions from an existing facility may cause or contribute to a violation of the NAAQS. You will be given the opportunity to present information to the Regional Supervisor that demonstrates that your facility's projected emissions do not cause such an effect.

(d) The Regional Supervisor will evaluate the new information submitted and will determine, based on the emissions data, the available meteorological data, and the distance of the facility from the SSB whether your actual emissions, including your attributed emissions, has the potential to cause or contribute to a violation of the NAAQS.

(1) If the Regional Supervisor determines that your existing facility's projected emissions are unlikely to cause or contribute to a violation of the NAAQS, the Regional Supervisor will notify the requesting State, or a Federally-recognized Indian tribe, and you and explain the reasons for this finding.

(2) If the Regional Supervisor determines that your existing facility's projected emissions have the potential to cause or contribute to a violation of the NAAQS, you must submit the additional information that the Regional Supervisor requests in order for BOEM to determine whether or not your existing facility causes or contributes to a violation of the NAAQS. You must submit this information within 120 days of the Regional Supervisor's request, or within a longer period of time at the Regional Supervisor's discretion.

■ 26. Add § 550.1012 to subpart J to read as follows:

§ 550.1012 What are the air quality requirements for pipeline rights-of-way holders?

(a) When you apply for or acquire a ROW in any part of the OCS under the air quality regulatory jurisdiction of the Department, you must:

(1) Include in your application the information required by § 550.205; and

(2) Demonstrate that your activities will comply with the requirements of subpart C of this part.

(b) For the purpose of this section:

(1) Any requirement in either § 550.205 or subpart C of this part that refers to plans should be interpreted to apply equally to ROW applications except for the provision regarding the consolidation of multiple facilities (§ 550.303(d)) and for the periodic resubmission of plans (§ 550.310(c));

(2) Any requirement in either § 550.205 or subpart C of this part that refers to lessees or operators applies equally to ROW holders or grantees, except that no additional requirements apply to any proposed or existing pipeline ROW or lease term pipeline holders, that are already included within the scope of an existing or proposed exploration or development plan.

(3) BOEM will notify BSEE of its determination that you have provided the information required by § 550.205 and met the requirements of subpart C of this part. If necessary, BOEM will

notify BSEE of additional conditions necessary to ensure that your activities will comply with subpart C of this part.

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Part III

Department of Transportation

49 CFR Part 1
Organization and Delegation of Powers and Duties; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. DOT–OST–2012–0123]

RIN 2105–AE42

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation is updating the regulations that govern the organization of the Department of Transportation and delegate authority from the Secretary to departmental officers, including the Deputy Secretary, the Under Secretary, the General Counsel, the Assistant Secretaries, the Inspector General, and the heads of the Department's Operating Administrations. This amendment responds to the Moving Ahead for Progress in the 21st Century Act and the Department of Transportation Appropriations Act, 2015, removes some delegations of authority that were unnecessary or inaccurate, and revises some delegations of authority to improve the description of current Department practice.

DATES: Effective April 5, 2016.

FOR FURTHER INFORMATION CONTACT: Michael A. Smith, Office of the General Counsel (C–10), 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–2917, *michael.a.smith@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule updates the regulations that organize the Department of Transportation and delegate authority from the Secretary of Transportation to other departmental officials, including the Deputy Secretary, the Under Secretary, the General Counsel, the Assistant Secretaries, the Inspector General, and the heads of the Operating Administrations. The purpose of this rule is to describe to the public and other government officials how the Department operates, which offices within the Department are responsible for which activities, and what authority each office exercises.

This rule updates part 1 on Organization and Delegation of Powers and Duties in two ways. First, the rule responds to the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405) and the Department of Transportation Appropriations Act, 2015 (Pub. L. 113–235 div. K, tit. I, 128 Stat. 2696). The rule adds delegations for new sources of authority from those laws. Second, the rule improves and simplifies the existing delegations of authority. It removes some delegations that were unnecessary or no longer described the exercise of authority within the Department. It revises and clarifies other delegations to more accurately describe current Department practice and ensure consistency with relevant statutory authorities.

This final rule does not impose substantive requirements on the public. It is ministerial and relates only to the Department's organization, procedure, and practice. Therefore, the Department has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). As these changes will not have a substantive impact on the public, the Department does not expect to receive substantive comments on the rule. Accordingly, under 5 U.S.C. 553(d)(3), the Department finds good cause for this rule to be effective less than 30 days after its publication in the **Federal Register**.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The Department has determined that this final rule is not a significant regulatory action under Executive Order 12866 and DOT Regulatory Policies and Procedures (44 FR 11034). It was not reviewed by the Office of Management and Budget. There are no costs associated with this rule.

Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the consultation requirements of Executive Order 13132 do not apply.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial or direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe this rule will impose any costs on small entities because it is merely organizational in nature. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) does not require a written statement for this final rule because the rule does not include a Federal mandate that may result in the expenditure in any one year of $155,000,000 or more by State, local, and tribal governments, or the private sector.

National Environmental Policy Act

The agency has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, "[p]romulgation of rules, regulations, and directives." 23 CFR 771.117(c)(20). The purpose of this rulemaking is to update the regulations that govern the organization of the Department and delegate authority from the Secretary to departmental officers and the heads of the Department's Operating Administrations. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons stated in the preamble, the Department of Transportation revises 49 CFR part 1 to read as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Subpart A—General

Sec.

1.1 Overview.
1.2 Organization of the Department.
1.3 Exercise of authority.
1.4 Construction.

Subpart B—Office of the Secretary

1.11 Overview.
1.13 OST key responsibilities.
1.15 OST structure.
1.17 OST line of secretarial succession.

OST Officials

1.20 Secretary of Transportation.
1.21 Reservations of Authority to the Secretary of Transportation.
1.22 Deputy Secretary.
1.23 Delegations to the Deputy Secretary.
1.24 Under Secretary of Transportation for Policy.
1.25 Delegations to the Under Secretary of Transportation for Policy.
1.25a Redelegations by the Under Secretary of Transportation for Policy.
1.26 General Counsel.
1.27 Delegations to the General Counsel.
1.27a Delegations to the Career Deputy General Counsel.
1.27b Delegations to the Assistant General Counsel for General Law.
1.30 Assistant Secretaries.
1.31 Assistant Secretary for Transportation Policy.
1.32 Assistant Secretary for Aviation and International Affairs.
1.33 Chief Financial Officer and Assistant Secretary for Budget and Programs.
1.34 Delegations to the Chief Financial Officer and Assistant Secretary for Budget and Programs.
1.35 Assistant Secretary for Governmental Affairs.
1.36 Delegations to the Assistant Secretary for Governmental Affairs.
1.37 Assistant Secretary for Administration.
1.38 Delegations to the Assistant Secretary for Administration.
1.38a Redelegations by the Assistant Secretary for Administration.
1.39 Executive Secretariat.
1.40 Departmental Office of Civil Rights.
1.41 Delegations to the Director of the Departmental Office of Civil Rights.
1.42 Office of Small and Disadvantaged Business Utilization.
1.43 Delegations to the Director of the Office of Small and Disadvantaged Business Utilization.
1.44 Office of Intelligence, Security and Emergency Response.
1.45 Delegations to the Director of the Office of Intelligence, Security and Emergency Response.
1.46 Office of Public Affairs.
1.47 Delegations to the Assistant to the Secretary and Director of Public Affairs.
1.48 Office of the Chief Information Officer.
1.49 Delegations to the Chief Information Officer.
1.50 Office of Drug & Alcohol Policy & Compliance.
1.60 General Authorizations and Delegations to Secretarial Officers.

Subpart C—Office of Inspector General

1.70 Overview.
1.71 Key responsibilities.
1.72 Structure.
1.73 Authority of Inspector General.
1.74 Delegations to Inspector General.

Subpart D—Operating Administrations

1.80 Overview.
1.81 Delegations to all Administrators.
1.81a Redelegation by all Administrators.
1.82 The Federal Aviation Administration.
1.83 Delegations to the Federal Aviation Administrator.
1.84 The Federal Highway Administration.
1.85 Delegations to the Federal Highway Administrator.
1.86 The Federal Motor Carrier Safety Administration.
1.87 Delegations to the Federal Motor Carrier Safety Administrator.
1.88 The Federal Railroad Administration.
1.89 Delegations to the Federal Railroad Administrator.
1.90 The Federal Transit Administration.
1.91 Delegations to the Federal Transit Administrator.
1.92 The Maritime Administration.
1.93 Delegations to the Maritime Administrator.
1.94 The National Highway Traffic Safety Administration.
1.95 Delegations to the National Highway Traffic Safety Administrator.
1.96 The Pipeline and Hazardous Materials Safety Administration.
1.97 Delegations to the Pipeline and Hazardous Materials Safety Administrator.
1.98 The Research and Innovative Technology Administration.
1.99 Delegations to the Research and Innovative Technology Administrator.
1.100 The Saint Lawrence Seaway Development Corporation.
1.101 Delegations to the Saint Lawrence Seaway Development Corporation Administrator. Appendix A to Part 1—Delegations and Redelegations by Secretarial Officers

Authority: 49 U.S.C. 322.

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Subpart A—General

§ 1.1 Overview.

This part describes the organization of the United States Department of Transportation and provides for the performance of duties imposed upon, and the exercise of powers vested in, the Secretary of Transportation by law.

§ 1.2 Organization of the Department.

(a) The Secretary of Transportation is the head of the Department.

(b) The Department comprises the Office of the Secretary of Transportation (OST), the Office of the Inspector General (OIG), and the following Operating Administrations, each headed by an Administrator who reports directly to the Secretary:

(1) The Federal Aviation Administration (FAA).

(2) The Federal Highway Administration (FHWA).

(3) The Federal Motor Carrier Safety Administration (FMCSA).

(4) The Federal Railroad Administration (FRA).

(5) The Federal Transit Administration (FTA).

(6) The Maritime Administration (MARAD).

(7) The National Highway Traffic Safety Administration (NHTSA).

(8) The Pipeline and Hazardous Materials Safety Administration (PHMSA).

(9) The Research and Innovative Technology Administration (RITA).

(10) The Saint Lawrence Seaway Development Corporation (SLSDC).

§ 1.3 Exercise of authority.

(a) In exercising powers and performing duties delegated by this part or redelegated pursuant thereto, officials of the Department of Transportation are governed by applicable laws, Executive Orders and regulations and by policies, objectives, plans, standards, procedures, and limitations as may be issued from time to time by or on behalf of the Secretary, or, with respect to matters under their jurisdictions, by or on behalf of the Deputy Secretary, the Under Secretary, the General Counsel, an Assistant Secretary, the Inspector General, or an Administrator. This includes, wherever specified, the requirement for advance notice to, prior coordination with, or prior approval by an authority other than that of the official proposing to act.

(b) Subject to the reservations of authority to the Secretary of Transportation in § 1.21, the Deputy Secretary, the Under Secretary, the General Counsel, the Assistant Secretaries, the Inspector General, and the Administrators exercise the powers and perform the duties delegated to them under this part.

(c) For delegations of authority vested in the Secretary by Executive Order 13526 (see also Executive Orders 12958 and 12065) originally to classify documents as secret and confidential, see § 8.11 of this subtitle. Previous delegations of authority to Department of Transportation officials to originally classify information as secret and confidential are hereby rescinded.

§ 1.4 Construction.

For the purposes of this part:

(a) "Federal Aviation Administrator" is synonymous with "Administrator of the Federal Aviation Administration."

(b) "Federal Highway Administrator" is synonymous with "Administrator of the Federal Highway Administration."

(c) "Federal Motor Carrier Safety Administrator" is synonymous with "Administrator of the Federal Motor Carrier Safety Administration."

(d) "Federal Railroad Administrator" is synonymous with "Administrator of the Federal Railroad Administration."

(e) "Federal Transit Administrator" is synonymous with "Administrator of the Federal Transit Administration."

(f) "Maritime Administrator" is synonymous with "Administrator of the Maritime Administration."

(g) "National Highway Traffic Safety Administrator" is synonymous with "Administrator of the National Highway Traffic Safety Administration."

(h) "Pipeline and Hazardous Materials Safety Administrator" is synonymous with "Administrator of the Pipeline and Hazardous Materials Safety Administration."

(i) "Saint Lawrence Seaway Development Corporation Administrator" is synonymous with "Administrator of the Saint Lawrence Seaway Development Corporation."

Subpart B—Office of the Secretary

§ 1.11 Overview.

This subpart sets forth the OST's key responsibilities, its basic organizational structure, and the line of Secretarial succession in time of need. It also describes the key responsibilities of OST officials, and sets forth delegations and reservations of authority to those officials.

§ 1.13 OST key responsibilities.

(a) The OST is responsible for:

(1) Providing leadership in formulating and executing well-balanced national and international transportation objectives, policies, and programs to ensure the Nation has safe, economically competitive transportation systems that support U.S. interests, that are maintained in a state of good repair, that foster environmental sustainability, and that support livable communities;

(2) Chairing the Department's Safety Council;

(3) Stimulating and promoting research and development in all modes and types of transportation, with special emphasis on transportation safety;

(4) Coordinating the various transportation programs of the Federal Government;

(5) Encouraging maximum private development of transportation services;

(6) Providing responsive, timely, and effective liaison with Congress and public and private organizations on transportation matters;

(7) Providing innovative approaches to urban transportation and environmental enhancement programs;

(8) Overseeing the Department's multimodal freight policy;

(9) Providing effective management of the Department as a whole to ensure it achieves organizational excellence;

(10) Leading Department-wide efforts for greater transparency and accountability;

(11) Administering the Department's Livable Communities initiative to increase access to convenient and affordable transportation choices and improve transportation networks that accommodate pedestrians and bicycles;

(12) Coordinating the Department's credit and financial assistance programs by leading the Credit Council to ensure responsible financing for the Nation's transportation projects;

(13) Formulating and executing policies to ensure effective operation of the Department's aviation economic program including functions related to consumer protection and civil rights, domestic airline licensing matters, competition oversight, airline data collection, and review of international route negotiations and route awards to carriers; and

(14) Leading and coordinating Federal Government transportation fringe benefit programs.

(b) [Reserved]

§ 1.15 OST structure.

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the following, all of which report directly to the Secretary:

(1) The Chief of Staff;

(2) The Executive Secretariat;

(3) The Departmental Office of Civil Rights;

(4) The Office of Small and Disadvantaged Business Utilization;

(5) The Office of Intelligence, Security and Emergency Response;

(6) The Office of Public Affairs;

(7) The Office of the Chief Information Officer; and

(8) The Office of Drug & Alcohol Policy & Compliance.

(b) The Under Secretary of Transportation for Policy, the General Counsel, and the Assistant Secretaries for Administration, Budget and Programs, and Governmental Affairs also report directly to the Secretary.

(c) *Office of the Under Secretary of Transportation for Policy.* This Office is composed of:

(1) The Office of the Assistant Secretary for Transportation Policy, which includes:

(i) The Office of Policy Development, Strategic Planning and Performance;

(ii) The Office of Infrastructure Finance and Innovation; and

(iii) The Office of the Chief Economist.

(2) The Office of the Assistant Secretary for Aviation and International Affairs, which includes:

(i) The Office of International Transportation and Trade;

(ii) The Office of International Aviation; and

(iii) The Office of Aviation Analysis.

(d) *Office of the General Counsel.* This Office is composed of:

(1) The Office of General Law;

(2) The Office of International Law;

(3) The Office of Litigation;

(4) The Office of Legislation;

(5) The Office of Regulation and Enforcement;

(6) The Office of Operations, which includes the Freedom of Information Act (FOIA) Office;

(7) The Office of Aviation Enforcement and Proceedings, which includes the Aviation Consumer Protection Division; and

(8) The Center for Alternative Dispute Resolution.

(e) *Office of the Chief Financial Officer and Assistant Secretary for Budget and Programs.* This Office is composed of:

(1) The Office of Budget and Program Performance;

(2) The Office of Financial Management;

(3) The Office of the Chief Financial Officer for the Office of the Secretary; and

(4) The Office of Credit Oversight and Risk Management.

(f) *Office of the Assistant Secretary for Governmental Affairs.* This Office contains the following functional areas: Congressional Affairs and Intergovernmental Affairs; and includes a Deputy Assistant Secretary for Tribal Government Affairs.

(g) *Office of the Assistant Secretary for Administration.* This Office is composed of:

(1) The Office of Audit Relations;

(2) The Office of Human Resource Management;

(3) The Office of Hearings;

(4) The Office of Security;

(5) The Office of the Senior Procurement Executive;

(6) The Office of Financial Management and Transit Benefit Programs; and

(7) The Office of Facilities, Information and Asset Management.

§ 1.17 OST line of secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or in the case of a vacancy, until a successor is appointed. Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the law, to depart from this order in designating an acting Secretary of Transportation.

(1) Deputy Secretary.

(2) Under Secretary of Transportation for Policy.

(3) General Counsel.

(4) Chief Financial Officer and Assistant Secretary for Budget and Programs.

(5) Assistant Secretary for Transportation Policy.

(6) Assistant Secretary for Governmental Affairs.

(7) Assistant Secretary for Aviation and International Affairs.

(8) Assistant Secretary for Administration.

(9) Administrator of the Federal Highway Administration.

(10) Administrator of the Federal Aviation Administration.

(11) Administrator of the Federal Motor Carrier Safety Administration.

(12) Administrator of the Federal Railroad Administration.

(13) Administrator of the Federal Transit Administration.

(14) Administrator of the Maritime Administration.

(15) Administrator of the Pipeline and Hazardous Materials Safety Administration.

(16) Administrator of the National Highway Traffic Safety Administration.

(17) Administrator of the Research and Innovative Technology Administration.

(18) Administrator of the Saint Lawrence Seaway Development Corporation.

(19) Regional Administrator, Southern Region, Federal Aviation Administration.

(20) Director, Resource Center, Lakewood, Colorado, Federal Highway Administration.

(21) Regional Administrator, Northwest Mountain Region, Federal Aviation Administration.

(b) Without regard to the foregoing, a person directed to perform the duties of the Secretary pursuant to 5 U.S.C. 3347 (the Vacancies Act) shall act as Secretary of Transportation.

OST Officials

§ 1.20 Secretary of Transportation.

The Secretary is the head of the Department. The Secretary exercises oversight of all of the OST components, as well as each of the Operating Administrations, and overall planning, direction, and control of the Department's agenda.

§ 1.21 Reservations of Authority to the Secretary of Transportation.

(a) All powers and duties that are not delegated by the Secretary in this part, or otherwise vested in officials other than the Secretary, are reserved to the Secretary. Except as otherwise provided, the Secretary may exercise powers and duties delegated or assigned to officials other than the Secretary.

(b) The delegations of authority in subpart C (Office of the Inspector General) and subpart D (Operating Administrations) of this part do not extend to the following actions, authority for which is reserved to the Secretary or the Secretary's delegatee within the Office of the Secretary:

(1) General transportation matters.

(i) Transportation leadership authority pursuant to 49 U.S.C. 301 (Duties of the Secretary of Transportation: Leadership, consultation, and cooperation).

(ii) Functions relating to transportation activities, plans, and programs under 49 U.S.C. 304 (Joint activities with the Secretary of Housing and Urban Development).

(iii) Authority to develop, prepare, coordinate, transmit, and revise transportation investment standards and criteria under 49 U.S.C. 305 (Transportation investment standards and criteria).

(iv) Authority relating to standard time zones and advanced (daylight) time (15 U.S.C. 260 *et seq.*).

(2) *Legislation, rulemakings, and reports.* (i) Submission to the President, the Director of the Office of Management and Budget, or Congress of proposals or recommendations for legislation, significant rulemakings and related documents as authorized by law, Executive Orders, proclamations or reorganization plans, or other Presidential action.

(ii) Submission to the President or Congress of any report or any proposed transportation policy or investment standards or criteria, except with the prior written approval of the Secretary.

(iii) Submission of the annual statement on systems of internal accounting and administrative control under the Federal Managers' Financial Integrity Act of 1982 (FMFIA) (31 U.S.C. 3512 note).

(3) *Budget and finance.* (i) Approval and submission to the Office of Management and Budget of original or amended budget estimates or requests for allocations of personnel ceiling (31 U.S.C. 1108).

(ii) Approval of requests for legislation which, if enacted, would authorize subsequent appropriations for the Department (31 U.S.C. 581b).

(iii) Transfer of the balance of an appropriation from one operating element to another within the Department (31 U.S.C. 581c).

(iv) Submission to the Director of the Office of Management and Budget of requests for the transfer of the balance or portions of an appropriation from one element to another within the Department (31 U.S.C. 665).

(4) *Personnel.* (i) Recommendations to the Office of Personnel Management regarding the allocation of a position to the Senior Executive Service (SES) or Senior Level (SL), or Scientific and Professional Positions (ST) (5 U.S.C. 5108).

(ii) Recommendations to the Office of Personnel Management of approval of the qualifications of any candidate for a position in the SES or SL.

(iii) Recommendations to the Office of Personnel Management of a Lump-Sum Incentive Award in Excess of $10,000 (5 U.S.C. 4502).

(iv) Approval of the following actions relating to Schedules A, B, C, or D (5 CFR part 213) and noncareer executive assignment positions or incumbents, except for actions under Schedules A and B limited to one year or less at grade GS–9 or lower, or an equivalent level:

(A) Establishment or abolition of positions;

(B) Hires;

(C) Promotions other than quality and periodic within-grade promotions;

(D) Transfer of personnel to Schedule A, B, C, or D positions or non-career executive assignment positions, either permanently or on detail; and

(E) Transfer of personnel from Schedule A, B, C, or D or non-career executive assignment positions to career Civil Service positions.

(v) Approval of employment of experts or consultants.

(vi) Authority to determine the maximum limit of age for appointment of air traffic controllers as provided by 5 U.S.C. 3307(b).

(vii) Authority to develop, coordinate, and issue wage schedules under the Federal Wage system.

(5) *Security.* (i) Authorizing the filling of a critical-sensitive position for a limited period by a person on whom a preappointment full field investigation has not been completed (Executive Order 10450) as amended and Executive Order 12968 as amended by Executive Order 13467.

(ii) Requesting Presidential approval of a claim of executive privilege with respect to information requested by a Congressional committee or Member of Congress.

(iii) Making determinations prescribed by Executive Order 12968 as amended by Executive Order 13467 and 32 CFR part 147 relating to the adjudication and final denial of access to classified information to industry personnel.

(iv) Making those determinations or delegations prescribed by Executive Order 13526 that are reserved to the head of the Department.

(6) *Procurement.* Exercising the extraordinary authority for defense contracts provided for in Pub. L. 85–804 [(50 U.S.C. 1431–1435)].

(7) *Printing.* Requesting approval of the Joint Committee on Printing for any procurement or other action requiring Committee approval.

(8) *Interagency agreements.* Executing any written interdepartmental or interagency agreement with the head of another executive department or agency.

(9) *Withholding of funds.* Withholding or suspension of Federal-Aid Highway funds on a state-wide basis and the waiver or compromise of such withholding or suspension, except for the administration of 23 U.S.C. 141, 158, 159, 161, and 163 which are specifically delegated in §§ 1.85 (FHWA) and 1.95 (NHTSA).

(10) *National Highway Safety Advisory Committee.* Directing the National Highway Safety Advisory Committee to meet (23 U.S.C. 404(c)).

(11) *Maritime Subsidy Board.* Reviewing decisions, reports, orders and other actions of the Maritime Subsidy Board.

(12) *Cash purchases of passenger transportation.* The authority under 41 CFR 301–51.100 to authorize and approve cash purchases for emergency passenger transportation services costing more than $100.

(13) *Solicitation of gifts.* The implied authority to solicit gifts associated with 49 U.S.C. 326(a).

(14) *Foreign travel.* Approving official travel outside of the United States.

(15) *United States Merchant Marine Academy.* Pursuant to 49 U.S.C. 51303, the authority to appoint each year without competition as cadets at the United States Merchant Marine Academy not more than 40 qualified individuals with qualities the Secretary considers to be of special value to the Academy.

(16) *Challenges and competitions.* Approving any challenge or competition administered by any office or Operating Administration of the Department.

(17) *Committees.* Approving the establishment, modification, extension, or termination of all advisory committees (including industry advisory committees) subject to the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.), and the designation of Departmental representatives to those committees.

(18) *Credit assistance approval.* Granting final approval of applications for credit assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA), 23 U.S.C. 601–609.

§ 1.22 Deputy Secretary.

Along with the Secretary, the Deputy Secretary exercises oversight of all of the OST components, as well as each of the Operating Administrations, and overall planning, direction, and control of the Department's agenda. The Deputy Secretary:

(a) May exercise the authority of the Secretary, except where specifically limited by law, order, regulation, or instructions of the Secretary;

(b) Serves as the Chief Operating Officer; and

(c) Serves as the Chief Acquisition Officer.

§ 1.23 Delegations to the Deputy Secretary.

The Deputy Secretary may exercise the authority of the Secretary, except where specifically limited by law, order, regulations, or instructions of the Secretary. In addition, the Deputy Secretary is delegated authority to:

(a) Exercise executive control over Departmental Budgeting and Program Evaluation.

(b) Serve as Chairman of the Departmental Executive Resources Board and its Executive Committee.

(c) Serve as the Chair of the Department's Safety Council.

(d) Serve as the Chair of the Department's Credit Council.

(e) Approve the establishment, modification, extension, or termination of:

(1) Department-wide (intra-department) committees affecting more than one program.

(2) OST-sponsored interagency committees.

(f) Approve the designation of:

(1) Departmental representatives and the chairman for interagency committees sponsored by the Office of the Secretary.

(2) Departmental members for international committees.

(g) Serve as the representative of the Secretary on the board of directors of the National Railroad Passenger Corporation and carry out the functions vested in the Secretary as a member of the board by 49 U.S.C. 24302.

(h) Approve the initiation of regulatory action, as defined in Executive Order 12866, by Secretarial offices and Operating Administrations.

§ 1.24 Under Secretary of Transportation for Policy.

The Under Secretary provides leadership in the Department's development of policies and programs to protect and enhance the safety, adequacy, and efficiency of the transportation system and services. The Office of the Under Secretary serves as the focal point within the Federal Government for coordination of intermodal transportation policy, which brings together departmental intermodal perspectives, advocates intermodal interests, and provides secretarial leadership and visibility on issues that involve or affect more than one Operating Administration.

§ 1.25 Delegations to the Under Secretary of Transportation for Policy.

The Under Secretary is delegated the following authorities:

(a) Lead the development of transportation policy and serve as the principal adviser to the Secretary on all transportation policy matters.

(b) Establish policy and ensure uniform departmental implementation of the National Environmental Policy Act of 1969, Pub. L. 91–190, as amended (42 U.S.C. 4321–4347) within the Department of Transportation.

(c) Oversee the implementation of 49 U.S.C. 303 (Policy on lands, wildlife and waterfowl refuges, and historic sites).

(d) Represent the Secretary of Transportation on various interagency boards, committees, and commissions to include the Architectural and Transportation Barriers Compliance Board and the Advisory Council on Historic Preservation and the Trade Policy Review Group and the Trade Policy Staff Committee.

(e) Serve as the Department's designated principal conservation officer pursuant to section 656 of the Department of Energy Organization Act, Pub. L. 94–91 [42 U.S.C. 7266], and carry out the functions vested in the Secretary by section 656 of the Act, which pertains to planning and implementing energy conservation matters with the Department of Energy.

(f) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Order T–1 (44 CFR chapter IV) under the Defense Production Act of 1950, as amended, Pub. L. 81–774, 64 Stat. 798 [50 U.S.C. App. 2061 *et seq.*] and Executive Order 10480, as amended (see also Executive Order 10773 and 12919).

(g) Serve as Department of Transportation member of the Interagency Group on International Aviation, and pursuant to Executive Order 11382, as amended, serve as Chair of the Group.

(h) Serve as second alternate representing the Secretary of Transportation to the Trade Policy Committee as mandated by Reorganization Plan No. 3 of 1979 (5 U.S.C. App. at 1381), as amended, and Executive Order 12188, as amended.

(i) As supplemented by 14 CFR part 385, and except as provided in §§ 1.99(j) (RITA), and 1.27 (General Counsel) of this part, carry out the functions transferred to the Department from the Civil Aeronautics Board and other related functions and authority vested in the Secretary under the following:

(1) Sections 40103(a)(2) (relating to the consultation with the Architectural and Transportation Barriers Compliance Board before prescribing regulations or procedures that will have a significant impact on accessibility of commercial airports for handicapped individuals), and (c) (relating to foreign aircrafts); 40105 (relating to international negotiations, agreements, and obligations); 40109(a), (c), (g), 46301(b) (smoke alarm penalty), (d), (f), (g) (relating to the authority to exempt certain air carriers) and (h); 40113(a) and (c); 40114(a) (relating to reports and records); 40115 (relating to the withholding of information from public disclosure) of Chapter 401 of 49 U.S.C.; and 40116 (relating to the Anti-Head Tax Act);

(2) The following chapters of title 49, U.S.C., except as related to departmental regulation of airline consumer protection and civil rights which is delegated to the General Counsel at § 1.27:

(i) Chapter 411 of title 49, U.S.C., relating to air carrier certification;

(ii) Chapter 413 of title 49, U.S.C., relating to foreign air transportation;

(iii) Chapter 415 of title 49, U.S.C., relating to pricing;

(iv) Chapter 417 of title 49, U.S.C., relating to the operations of air carriers, except sections 41721–41723;

(v) Chapter 419 of title 49, U.S.C. and 39 U.S.C. 5402, relating to the transportation of mail; and

(vi) Section 42303 of 49 U.S.C., relating to the management of the Web site regarding the use of insecticides in passenger aircraft.

(3) Section 42111 of title 49, U.S.C. with respect to mutual aid agreements as it relates to foreign air transportation;

(4) Chapters 461 and 463 of title 49, U.S.C., relating to aviation investigations, proceedings, and penalties under Part A of Subtitle VII of title 49, U.S.C. except for those sections delegated to the General Counsel under § 1.27, and to the Federal Aviation Administrator under § 1.83;

(5) Chapter 473 of title 49, U.S.C., relating to international airport facilities.

(6) Section 11 of the Clayton Act, Pub. L. 63–212 [15 U.S.C. 21], relating to air carriers and foreign air carriers.

(7) Section 3 of An Act to Encourage Travel in the United States, and for other purposes, Pub. L. 76–755, 54 Stat. 773 [16 U.S.C. 18b].

(8) Sections 108(a)(4), 621(b)(5), 704(a)(5), and 814(b)(5) of the Consumer Credit Protection Act, Pub. L. 90–321 [15 U.S.C. 1607(a)(4), 1681s(b)(5), 1691c(a)(5), and 1692l(b)(5)].

(j) Carry out the functions vested in the Secretary by 49 U.S.C. 44907(b)(1), (c), and (e) related to the security of foreign airports in coordination with the General Counsel, the Federal Aviation Administrator, and the Assistant Secretary for Administration.

(k) Carry out section 101(a)(2) of the Air Transportation Safety and System Stabilization Act, Pub. L. 107–42 [49 U.S.C. 40101 note], as delegated to the Secretary of Transportation by the President pursuant to the Presidential Memorandum dated September 25, 2001, 3 CFR, 2001 Comp., p. 911.

(l) Exercise the authority vested in the Secretary by section 11143 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109–59, 119 Stat. 1144 (SAFETEA–LU), to manage the day-to-day activities associated with implementation of section 11143 regarding private activity bonds and tax-exempt financing of highway projects and rail-truck facilities.

(m) In coordination with the General Counsel, carry out the duties of the Secretary under Executive Orders 12866 and 13563 to establish the values of time and statistical life in connection with assessing the costs and benefits of Departmental regulatory action.

(n) Carry out the functions vested in the Secretary by 49 U.S.C. 47129, relating to resolution of disputes over the reasonableness of fees imposed upon air carriers.

(o) Carry out the functions and exercise the authority vested in the Secretary by 23 U.S.C. 167(f) (National Freight Strategic Plan).

§ 1.25a Redelegations by the Under Secretary of Transportation for Policy.

(a) The Assistant Secretary for Transportation Policy is redelegated authority to:

(1)(i) Redelegate and authorize successive redelegation of authority granted in this paragraph (a) to officials within the Office of the Assistant Secretary for Transportation Policy, except as limited by law or specific administrative reservation.

(ii) Publish, in appendix A of this part, redelegations made under paragraph (a)(1)(i) of this section.

(2) Establish policy and maintain oversight of implementation of the National Environmental Policy Act of 1969, Pub. L. 91–190, as amended (42 U.S.C. 4321–4347) within the Department of Transportation.

(3) Oversee the implementation of 49 U.S.C. 303 (Policy on lands, wildlife and waterfowl refuges, and historic sites).

(4) Represent the Secretary of Transportation on various interagency boards, committees, and commissions to include the Architectural and Transportation Barriers Compliance Board and the Advisory Council on Historic Preservation and the Trade Policy Review Group and the Trade Policy Staff Committee.

(5) Serve as the Department's designated principal conservation officer pursuant to section 656 of the Department of Energy Organization Act, Pub. L. 94–91 [42 U.S.C. 7266], and carry out the functions vested in the Secretary by section 656 of the Act, which pertains to planning and implementing energy conservation matters with the Department of Energy.

(6) Carry out the functions of section 42303 of 49 U.S.C., relating to the management of the Web site regarding

the use of insecticides in passenger aircraft.

(7) In coordination with the General Counsel, carry out the duties of the Secretary under Executive Orders 12866 and 13563 to establish the value of statistical life in connection with assessing the costs and benefits of Departmental regulatory action.

(8) Carry out the duties of the Secretary under Executive Orders 12866 and 13563 to establish the value of time in connection with assessing the costs and benefits of Departmental regulatory action.

(b) The Assistant Secretary for Aviation and International Affairs is redelegated authority to:

(1)(i) Redelegate and authorize successive redelegation of authority granted in this paragraph (b) to officials within the Office of the Assistant Secretary for Aviation and International Affairs, except as limited by law or specific administrative reservation.

(ii) Publish, in appendix A of this part, redelegations made under paragraph (b)(1)(i) of this section.

(2) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Order T–1 (44 CFR chapter IV) under the Defense Production Act of 1950, as amended, Pub. L. 81–774, 64 Stat. 798 [50 U.S.C. App. 2061 *et seq.*] and Executive Order 10480, as amended (see also Executive Order 10773 and 12919).

(3) Serve as Department of Transportation member of the Interagency Group on International Aviation, and pursuant to Executive Order 11382, serve as Chair of the Group.

(4) Serve as second alternate representing the Secretary of Transportation to the Trade Policy Committee as mandated by Reorganization Plan No. 3 of 1979 (5 U.S.C. App. at 1381), as amended, and Executive Order 12188.

(5) Represent the Department of Transportation at the Trade Policy Committee Review Group and the Trade Policy Staff Committee, which were established at 15 CFR part 2002 as subordinate bodies of the Trade Policy Committee.

(6) As supplemented by 14 CFR part 385, and except as provided in §§ 1.99 (RITA), and 1.27 (General Counsel), carry out the functions transferred to the Department from the Civil Aeronautics Board and other related functions and authority vested in the Secretary under the following provisions of Title 49, U.S.C.:

(i) Sections 40103(a)(2) (relating to the consultation with the Architectural and Transportation Barriers Compliance Board before prescribing regulations or procedures that will have a significant impact on accessibility of commercial airports for handicapped individuals), and (c) (relating to foreign aircrafts); 40105 (relating to international negotiations, agreements, and obligations); 40109(a), (c), (g), 46301(b) (smoke alarm penalty), (d), (f), (g) (relating to the authority to exempt certain air carriers) and (h); 40113(a) and (c); 40114(a) (relating to reports and records); 40115 (relating to the withholding of information from public disclosure; and 40116 (relating to the Anti-Head Tax Act);

(ii) The following chapters of title 49, U.S.C., except as related to departmental regulation of airline consumer protection and civil rights which is delegated to the General Counsel at § 1.27:

(A) Chapter 411, relating to air carrier certification;

(B) Chapter 413, relating to foreign air transportation;

(C) Chapter 415, relating to pricing;

(D) Chapter 417, relating to the operations of air carriers, except section 41721–41723;

(E) Chapter 419, and 39 U.S.C. 5402, relating to the transportation of mail;

(iii) Section 42111 of title 49, U.S.C. with respect to mutual aid agreements as it relates to foreign air transportation;

(iv) Chapters 461 and 463 of title 49, U.S.C., relating to aviation investigations, proceedings, and penalties under Part A of 49 U.S.C. Subtitle VII except for those sections delegated to the General Counsel under § 1.27, and to the Federal Aviation Administrator under § 1.83;

(v) Chapter 473 of title 49, U.S.C., relating to international airport facilities.

(vi) Section 11 of the Clayton Act, Pub. L. 63–212 [15 U.S.C. 21], relating to air carriers and foreign air carriers.

(vii) Section 3 of An Act to Encourage Travel in the United States, and for other purposes, Pub. L. 76–755, 54 Stat. 773 [16 U.S.C. 18b].

(viii) Sections 108(a)(4), 621(b)(5), 704(a)(5), and 814(b)(5) of the Consumer Credit Protection Act, Pub. L. 90–321 [15 U.S.C. 1607(a)(4), 1681s(b)(5), 1691c(a)(5), and 1692l(b)(5)].

(7) Carry out the functions vested in the Secretary by 49 U.S.C. 44907(b)(1), (c), and (e) related to the security of foreign airports in coordination with the General Counsel, the Federal Aviation Administrator, and the Assistant Secretary for Administration.

(8) Carry out section 101(a)(2) of the Air Transportation Safety and System Stabilization Act, Pub. L. 107–42 [49 U.S.C. 40101 note], as delegated to the Secretary of Transportation by the President pursuant to the Presidential Memorandum dated September 25, 2001, 3 CFR, 2001 Comp., p. 911.

(9) Carry out the functions vested in the Secretary by 49 U.S.C. 47129, relating to resolution of disputes over the reasonableness of fees imposed upon air carriers.

§ 1.26 General Counsel.

The General Counsel is the chief legal officer of the Department, legal advisor to the Secretary, and final authority within the Department on questions of law. The Office of the General Counsel provides legal advice to the Secretary and secretarial offices, and supervision, coordination, and review of the legal work of the Chief Counsel Offices in the Department. The General Counsel participates with each Operating Administrator in the performance reviews of Chief Counsel. The General Counsel is responsible for retention of outside counsel, and for the approval of the hiring and promotion of departmental attorneys (other than in the Federal Aviation Administration). The General Counsel is also responsible for departmental regulation under statutes including the Air Carrier Access Act, statutes prohibiting unfair and deceptive practices in air transportation, the Americans with Disabilities Act, the Disadvantaged Business Enterprise program, and the Uniform Time Act. The General Counsel coordinates all international legal matters, and departmental participation in proceedings before other federal and state agencies. The General Counsel provides oversight of departmental litigation, regulation, legislation, Freedom of Information Act compliance, and administrative enforcement.

§ 1.27 Delegations to the General Counsel.

The General Counsel is delegated authority to:

(a) Conduct all rulemaking proceedings under the Americans with Disabilities Act, the Disadvantaged Business Enterprise program, and the Uniform Time Act, as amended (15 U.S.C. 260 *et seq.*).

(b) Determine the practicability of applying the standard time of any standard time zone to the movements of any common carrier engaged in interstate or foreign commerce and issue operating exceptions in any case in which the General Counsel determines that it is impractical to apply the standard time (49 CFR 71.1).

(c) Issue regulations making editorial changes or corrections to the regulations of the Office of the Secretary.

(d) Grant permission, under specific circumstances, to deviate from a policy or procedure prescribed by the regulations of the Office of the Secretary (49 CFR part 9) with respect to the testimony of OST employees as witnesses in legal proceedings, the serving of legal process and pleadings in legal proceedings involving the Secretary or his Office, and the production of records of that Office pursuant to subpoena.

(e) Respond to petitions for rulemaking or petitions for exemptions in accordance with 49 CFR 5.13(c) (Processing of petitions), and notify petitioners of decisions in accordance with 49 CFR 5.13(d).

(f) Provide counsel to employees on questions of conflict of interest covered by departmental regulations on employee responsibility and conduct.

(g) Coordinate the issuance of proposed Executive Orders and proclamations for transmittal to the Office of Management and Budget for action by the White House.

(h) Except with respect to proceedings relating to safety fitness of an applicant (49 U.S.C. 307), decide on requests to intervene or appear before courts (with the consent of the Department of Justice) or agencies to present the views of the Department, subject to the concurrence of the Secretary.

(i) Exercise the authority delegated to the Department by the Assistant Attorney General, Land and Natural Resources Division, in his order of October 2, 1970, to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of the Department. (See also Appendix 1 relating to delegations to Operating Administration Chief Counsel).

(j) Exercise the Secretary's authority under 28 U.S.C. 2672 and 28 CFR part 14, related to the administrative disposition of federal tort claims, for claims involving the Office of the Secretary.

(k) Compromise, suspend collection action on, or terminate claims of the United States that are referred to, or arise out of the activities of the Office of the Secretary of Transportation.

(l) Conduct coordination with foreign governments under section 118 of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1428).

(m) Exercise review authority under 49 U.S.C. 41307 (related actions about foreign air transportation) delegated to the Secretary by the President in Executive Order 12597.

(n) Assist and protect consumers in their dealings with the air transportation industry and conduct all departmental regulation of airline consumer protection and civil rights pursuant to chapters 401 (General Provisions), 411 (Air Carrier Certificates), 413 (Foreign Air Transportation), 417 (Operations of Carriers), and 423 (Passenger Air Service Improvements) of title 49 U.S.C.

(o) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b) (Security and research and development activities), as implemented by 49 CFR part 15 (Protection of Sensitive Security Information), in consultation and coordination with the Office of Intelligence, Security and Emergency Response.

(p) Appear on behalf of the Department on the record in hearing cases, and initiate and carry out enforcement actions on behalf of the Department, under the authority transferred to the Department from the Civil Aeronautics Board as described in §§ 1.25 and 1.25a (delegations to and redelegations by the Under Secretary), and 1.99 (RITA). This includes the authority to compromise penalties under 49 U.S.C. 46301 (civil penalties); to issue appropriate orders, including cease and desist orders, under 49 U.S.C. 46101 (complaints and investigations); and to require the production of information, under 49 U.S.C. 41708, enter carrier property and inspect records, under 49 U.S.C. 41709, and inquire into the management of the business of a carrier under 49 U.S.C. 41711 (Air carrier management inquiry and cooperation with other authorities), as appropriate to the enforcement responsibilities. In the event that such an enforcement matter comes before the Secretary of Transportation for adjudication, the Deputy General Counsel shall advise the Secretary.

(q) Initiate and carry out enforcement actions relating to:

(1) Foreign airport security on behalf of the Department under 49 U.S.C. 44907; and

(2) The Consumer Credit Protection Act under section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443) [15 U.S.C. 1607(a)(4), 1681s(b)(5), 1691c(a)(5) and 1692l(b)(5)].

(r) Administer 5 U.S.C. 552 (FOIA) and 49 CFR part 7 (Public Availability of Information) in connection with the records of the Office of the Secretary and issue procedures to ensure uniform departmental implementation of statutes and regulations regarding public access to records.

(s) Prepare reports by carriers on incidents involving animals during air transport pursuant to 49 U.S.C. 41721.

(t) Exercise authority vested in the Secretary by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321), to promulgate rules that adjust civil penalties with respect to aviation enforcement.

(u) In coordination with the Under Secretary, to carry out the duties of the Secretary under Executive Orders 12866 and 13563 to establish the value of statistical life in connection with assessing the costs and benefits of Departmental regulatory action.

(v) Approve the initiation of regulatory action, as defined in Executive Order 12866, by Secretarial offices and Operating Administrations in the event that the Deputy Secretary is absent or otherwise unavailable to exercise such authority (see § 1.23(h)).

(w) Approve requests to reclassify rulemakings as non-significant under DOT procedures.

§ 1.27a Delegations to the Career Deputy General Counsel.

The career Deputy General Counsel is delegated authority to:

(a) Serve as the Department's Designated Agency Ethics Official in accordance with 5 CFR 2638.202;

(b) Serve as the Department's Dispute Resolution Specialist pursuant to section 3(b) of the Alternative Dispute Resolution Act of 1996, Pub. L. 104–320, 5 U.S.C. App.; and

(c) Serve as the Department's Chief FOIA Officer under 5 U.S.C. 552(j).

§ 1.27b Delegations to the Assistant General Counsel for General Law.

The Assistant General Counsel for General Law is delegated authority to serve as the Department's Alternate Agency Ethics Official in accordance with 5 CFR 2638.202.

§ 1.30 Assistant Secretaries.

(a) In performing their functions, the Assistant Secretaries are responsible for continuing liaison and coordination among themselves and with the Operating Administrations to:

(1) Avoid unnecessary duplication of effort by or in conflict with the performance of similar activities by the Operating Administrations and the other Assistant Secretaries pursuant to their Secretarial delegations of authority or other legal authorities; and

(2) Assure that the views of the Operating Administrations are considered in developing departmental policies, plans, and proposals. The Assistant Secretaries are also available to assist, as appropriate, the Operating Administrations in implementing departmental policy and programs. As primary staff advisors to the Secretary,

the Assistant Secretaries are concerned with transportation matters of the broadest scope, including modal, intermodal, and other matters of Secretarial interest.

(b) There are exceptions to the normal staff role described in paragraph (a) of this section. In selected instances, the Secretary has specifically delegated to Assistant Secretaries authority which they may exercise on the Secretary's behalf.

§ 1.31 Assistant Secretary for Transportation Policy.

The Assistant Secretary for Transportation Policy provides policy advice to the Secretary, the Deputy Secretary, and the Under Secretary. The Office of the Assistant Secretary for Transportation Policy is responsible for: Public policy development, coordination, and evaluation for all aspects of transportation, except in the areas of aviation and international affairs, with the goal of making the Nation's transportation resources function as an integrated national system; evaluation of private transportation sector operating and economic issues; evaluation of public transportation sector operating and economic issues; regulatory and legislative initiatives and review; energy, environmental, disability, and safety policy and program development and review; and transportation infrastructure assessment and review. For delegations to the Assistant Secretary for Transportation Policy, see § 1.25a(a).

§ 1.32 Assistant Secretary for Aviation and International Affairs.

The Office of the Assistant Secretary for Aviation and International Affairs is responsible for policy development, coordination, and evaluation of issues involving aviation, as well as international issues involving all areas of transportation; private sector evaluation; international transportation and transport-related trade policy and issues; regulatory and legislative initiatives and review of maritime/shipbuilding policies and programs; transport-related trade promotion; coordination of land transport relations with Canada and Mexico; economic regulation of the airline industry while placing maximum reliance on market forces and on actual and potential competition; the essential air service program and other rural air service programs; and, in coordination with the FAA, promotion of the aerospace industry. For delegations to the Assistant Secretary for Aviation and International Affairs, see § 1.25a(b).

§ 1.33 Chief Financial Officer and Assistant Secretary for Budget and Programs.

(a) The Chief Financial Officer (CFO) is the principal budget and financial advisor to the Secretary and serves as Assistant Secretary for Budget and Programs. The CFO and Assistant Secretary for Budget and Programs provides oversight and policy guidance for all budget, financial management, program performance, and internal control activities of the Department and its Operating Administrations.

(b) The CFO and Assistant Secretary for Budget and Programs concurs in the appointment and promotion of Chief Financial Officers, Budget Officers, and Directors of Finance of the Department and its Operating Administrations, and participates with each Administrator in the performance reviews of Chief Financial Officers, Budget Officers, and Directors of Finance in each of the Operating Administrations.

(c) The CFO and Assistant Secretary for Budget and Programs, in consultation with the Chief Information Officer, may designate any information technology system as a financial management system under the CFO's policy and oversight area of responsibility.

(d) The CFO and Assistant Secretary for Budget and Programs serves as the Vice Chair of the Department's Credit Council. The Office of the Assistant Secretary supports the Department's Credit Council by analyzing applications for the Department's various credit programs. The CFO also oversees the TIFIA program and the TIFIA Joint Program Office on behalf of the Secretary, including the evaluation of individual projects, and provides overall policy direction and program decisions for the TIFIA program.

(e) The CFO and Assistant Secretary for Budget and Programs is responsible for preparation, review, and presentation of Department budget estimates; liaison with the Office of Management and Budget and Congressional Budget and Appropriations Committees; preparation of the Department's annual financial statements; departmental financial plans, apportionments, reapportionments, reprogrammings, and allotments; program and systems evaluation and analysis; program evaluation criteria; program resource plans; analysis and review of legislative proposals and one-time reports and studies required by Congress; and budget and financial management relating to the Office of the Secretary.

§ 1.34 Delegations to the Chief Financial Officer and Assistant Secretary for Budget and Programs.

The Chief Financial Officer and Assistant Secretary for Budget and Programs is delegated authority to:

(a) Serve as the Department's Chief Financial Officer pursuant to 31 U.S.C. 901 (Establishment of Agency Chief Financial Officers).

(b) Exercise day-to-day operating management responsibility over the Office of Budget and Program Performance, the Office of the OST Chief Financial Officer, the Office of Financial Management, and the Office of Credit Oversight and Risk Management.

(c) Direct and manage the Departmental planning, evaluation, budget, financial management, and internal control activities.

(d) Exercise oversight and provide exclusive policy guidance to the Enterprise Services Center (ESC) regarding all financial management activities conducted by ESC and financial systems operated by ESC. This authority includes concurrence with any organizational changes within the Federal Aviation Administration that may affect financial management operations of the ESC.

(e) Request apportionment or reapportionment of funds by the Office of Management and Budget, provided that no request for apportionment or reapportionment which anticipates the need for a supplemental appropriation shall be submitted to the Office of Management and Budget without appropriate certification by the Secretary.

(f) Issue allotments or allocations of funds to components of the Department.

(g) Authorize and approve official travel and transportation for staff members of the Immediate Office of the Secretary including authority to sign and approve related travel orders and travel vouchers, but not including requests for overseas travel.

(h) Issue monetary authorizations for use of reception and representation funds.

(i) Except as otherwise delegated, establish or operate or both, any special funds that are required by statute or administrative determination.

(j) Exercise the Secretary's authority under 31 U.S.C. 3711 to collect, compromise, suspend collection action on, or terminate claims of the United States which are referred to, or arise out of the activities of, the Office of the Secretary (excluding claims pertaining to the Working Capital Fund), subject to the limits on that authority imposed by 31 U.S.C. 3711 and the Federal Claims

Collection Standards, 31 CFR chapter IX.

(k) Exercise the Secretary's authority under the Improper Payments Elimination and Recovery Act of 2010 (Pub. L. 111–204) (33 U.S.C. 3301 note).

(l) Exercise the Secretary's authority under the Improper Payments Information Act of 2002 (Pub. L. 107–300) (31 U.S.C. 3321 note).

(m) Exercise the Secretary's authority under the Recovery Auditing Act (Section 831, Defense Authorization Act for FY 2002 (Pub. L. 107–107)).

(n) Exercise the Secretary's authority under the Federal Financial Management Improvement Act of 1996 (31 U.S.C. 3512 note).

(o) Exercise the Secretary's authority under Federal Managers' Financial Integrity Act of 1982 (FMFIA) (31 U.S.C. 3512 note).

(p) Exercise the Secretary's authority under the Accounting and Auditing Act of 1950 (31 U.S.C. 3512), as amended by FMFIA.

(q) Exercise the Secretary's authority under the Government Performance and Results Act (GPRA) (Pub. L. 103–623).

(r) Exercise the Secretary's authority under the Accountability of Tax Dollars Act of 2002, 31 U.S.C. 3515.

(s) Exercise the Secretary's authority under the Government Management Reform Act of 1994 (GMRA) (Pub. L. 103–356).

(t) Exercise the Secretary's authority under 5 U.S.C. 5584 and the OMB memorandum, "Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316" (December 17, 1996) to waive claims of the United States arising out of an erroneous payment to an employee of pay or allowances, or travel, transportation, or relocation expenses and allowances, and deny requests for waiver of such claims.

(u) Serve as the Department's Performance Improvement Officer under 31 U.S.C. 1124.

§ 1.35 Assistant Secretary for Governmental Affairs.

The Assistant Secretary for Governmental Affairs serves as the Department's primary point of contact for Congressional offices, as well as State and locally elected officials; works with other departmental offices to ensure that Congressional mandates are fully implemented by the Department; and works with the White House, other Federal agencies, and Congress to fulfill the Department's legislative priorities. The Assistant Secretary coordinates congressional and intergovernmental activities with governmental affairs offices in the Operating Administrations. The Assistant Secretary participates with each Administrator in the performance reviews of the Operating Administrations' Directors of Governmental Affairs. The Assistant Secretary supervises the Deputy Assistant Secretary for Tribal Government Affairs who plans and coordinates the Department's policies and programs with respect to Indian tribes and tribal organizations.

§ 1.36 Delegations to the Assistant Secretary for Governmental Affairs.

The Assistant Secretary for Governmental Affairs is delegated authority to:

(a) Establish procedures for responding to Congressional correspondence; and

(b) Supervise the Deputy Assistant Secretary for Tribal Government Affairs.

§ 1.37 Assistant Secretary for Administration.

The Assistant Secretary for Administration is the principal advisor to the Secretary and Deputy Secretary on Department-wide administrative matters. The Assistant Secretary for Administration serves as the Designated Agency Safety and Health Official. The Office of the Assistant Secretary for Administration's responsibilities include: Strategic management of human capital; monitoring the progress of departmental offices related to sustainability goals; controls and standards to ensure that procurement and financial assistance programs are in accord with good business practice; follow-up and resolution of Government Accountability Office and Inspector General audit reviews; information resource management; property management information; facilities; and security. The Assistant Secretary for Administration is responsible for recommending performance objectives for the Operating Administrations' Directors of Human Resources.

§ 1.38 Delegations to the Assistant Secretary for Administration.

The Assistant Secretary for Administration is delegated authority for the following:

(a) *Acquisition.* (1) Exercise procurement authority with respect to requirements of the Office of the Secretary or an Operating Administration, if requested under an agreement with that Operating Administration.

(2) Make the required determinations with respect to mistakes in bids relative to sales of personal property conducted by the Office of the Secretary without power of redelegation.

(3) Except as delegated to the National Highway Traffic Safety Administrator by § 1.95, carry out the functions vested in the Secretary by section 3 of Executive Order 11912 ("Delegation of Authorities Relating to Energy Policy and Conservation"), as amended.

(4) Carry out the functions delegated to the Secretary from time to time by the Administrator of General Services to lease real property for Department use.

(5) Carry out the duties and responsibilities of agency head for departmental procurement within the meaning of the Federal Acquisition Regulation. This authority as agency head for departmental procurement excludes duties, responsibilities, and powers expressly reserved for the Secretary of Transportation.

(6) Serve as Deputy Chief Acquisition Officer.

(7) Provide departmental guidance on grants, cooperative agreements, and other financial assistance transactions, but not including loans, loan guarantees, interest subsidies, or insurance.

(8) Issue departmental procurement regulations, subject to coordination with the General Counsel and interested Operating Administrations. In commenting upon proposed provisions for the procurement regulations, the Operating Administrations will indicate the nature and purpose of any additional implementing or supplementing policy guidance which they propose to issue at the Operating Administration level.

(b) *Personnel.* (1) Conduct a personnel management program for the Office of the Secretary of Transportation, with authority to take, direct others to take, recommend or approve any personnel action with respect to such authority.

(2) Serve as Vice Chair of the Departmental Executive Resources Board.

(3) Exercise emergency authority to hire without the prior approval of the Deputy Secretary normally required by departmental procedures implementing general employment limitations when in the judgment of the Assistant Secretary immediate action is necessary to effect the hire and avoid the loss of a well-qualified job applicant, and for similar reasons.

(4) Review proposals of the Office of the Secretary for each new appointment or transfer to verify the essentiality of the position.

(5) Approve employment of experts and consultants in accordance with 5 U.S.C. 3109.

(6) Provide policy and overall direction in the execution of the DOT Labor-Management Relations Program.

(7) Develop and operate the Federal Employee Workplace Drug and Alcohol Testing Program in accordance with Executive Order 12564 and The Omnibus Transportation Employee Testing Act of 1991, Public Law 102–143, Title V.

(8) Serve as the Chief Human Capital Officer:

(i) Oversee, direct, and execute all authorities included in the Chief Human Capital Officers Act of 2002 (5 U.S.C. 1401 *et seq.*); and

(ii) Advise the Secretary on the Department's human capital needs and obligations, and implement all related rules and regulations of the President and the Office of Personnel Management, and all laws governing human resource management.

(9) Serve as the Telework Managing Officer under 5 U.S.C. 6505.

(c) *Sustainability.* (1) Responsible for ensuring that the Department meets its sustainability goals pursuant to the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110–140); the Energy Policy Act of 2005 (Pub. L. 109–58); and Executive Order 13693 ("Planning for Federal Sustainability in the Next Decade").

(2) Serve as the Chief Sustainability Officer under Executive Order 13693.

(d) *Finance.* (1) Settle and pay claims by employees of the Office of the Secretary for personal property losses as provided by 31 U.S.C. 3721.

(2) Oversee the Working Capital Fund for the Office of the Secretary, established by 49 U.S.C. 327.

(3) Exercise the Secretary's authority under 31 U.S.C. 3711 to collect, compromise, suspend collection action on, or terminate claims of the United States which are referred to, or arise out of the activities of the Working Capital Fund, subject to the limits on that authority imposed by 31 U.S.C. 3711 and the Federal Claims Collection Standards, 31 CFR chapter IX.

(e) *Security.* (1) Serves as the agency representative appointed by the Secretary of Transportation to participate on the Interagency Security Committee in accordance with Executive Order 12977, to establish policies for the security in and protection of Federal facilities.

(2) Represents the department on the White House Communications Agency Principal Communications Working Group and the Department of State Overseas Security Policy Board.

(3) Conducts an internal security management program for the Department of Transportation with authority to take, direct others to take, recommend, or approve security actions with respect to such authorities related to personnel security, physical security, technical security, and classified and sensitive information management.

(4) Issues identification media as directed by Homeland Security Presidential Directive 12, "Policy for Common Identification Standard for Federal Employees and Contractors" and other identification media (including credentials, passports and visas) by direction of the Secretary.

(5) Manages the Department's classified information program as directed by Executive Order 13526 ("Classified National Security Information").

(6) Takes certain classified actions on behalf of the Department in connection with technical counter-surveillance programs as required by Executive Order 13526 ("Classified National Security Information").

(7) In conjunction with the Office of Security, Intelligence and Emergency Response, and the Office of the General Counsel, carries out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, related to the protection of information designated as Sensitive Security Information.

(8) Ensure Department-wide compliance with Executive Orders 12968 as amended, 13467, 13488, 13526, 13556, and related regulations and issuances.

(f) *Printing.* Request approval of the Joint Committee on Printing, Congress of the United States, for any procurement or other action requiring Committee approval.

(g) *Hearings.* Provide logistical and administrative support to the Department's Office of Hearings.

(h) *Federal real property management.* Carry out the functions assigned to the Secretary with respect to Executive Order 13327, as amended.

(i) *The Uniform Act.* Carry out the functions vested in the Secretary to implement the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act), 42 U.S.C. Chapter 61, with respect to programs administered by the Office of the Secretary. The Assistant Secretary may prescribe additional Uniform Act guidance that is appropriate to those particular programs, provided that such additional guidance must be consistent with the Uniform Act and 49 CFR part 24. The lead agency for Uniform Act matters is the Federal Highway Administration (see § 1.85 and 49 CFR part 24).

(j) *Designated Agency Safety and Health Official.* Serve as the Designated Agency Safety and Health Official under 29 CFR 1960.6(a) to represent the interest of, and support, the Department's occupational safety and health program.

(k) *Senior Real Property Officer.* Serve as the Senior Real Property Officer for the Department pursuant to Executive Order 13327 ("Federal Real Property Asset Management") (as amended), and chair the Departmental Real Property Planning Council.

(l) *Transportation fringe benefits.* (1) Oversee the Department's transportation fringe benefit program under 5 U.S.C. 7905 and 26 U.S.C. 132(f).

(2) Consult with and provide guidance to other Federal agencies on transportation fringe benefit programs under 5 U.S.C. 7905 and 26 U.S.C. 132(f).

(3) Establish and maintain uniform Federal Government standards for developing and supporting Federal agencies' transportation fringe benefit programs under 5 U.S.C. 7905 and 26 U.S.C. 132(f).

§ 1.38a Redelegations by the Assistant Secretary for Administration.

(a) The Director, Office of the Senior Procurement Executive is redelegated the authority to:

(1) Carry out the duties and responsibilities of agency head for departmental procurement within the meaning of the Federal Acquisition Regulation except for those duties expressly reserved for the Secretary of Transportation.

(2) Carry out the functions of the Chief Acquisition Officer (CAO) except for those functions specifically reserved for the Deputy Secretary. In carrying out these functions and in support of requirements under Services Acquisition Reform Act (SARA), enacted as part of the National Defense Authorization Act for 2004—Public Law 108–136, the Senior Procurement Executive (SPE) is expected to interact directly, and without intervening authority, with the CAO on issues related to strategic acquisition policy, implementation, and management. The nature and frequency of interactions with the CAO will be determined mutually between the SPE and the CAO.

(3) Procure and authorize payment for property and services for the Office of the Secretary, with power to re-delegate and authorize successive re-delegations.

(b) The Director of Human Resources Management is redelegated the authority to:

(1) Develop departmental human capital policies and objectives, and monitor and oversee the implementation of those policies.

(2) Establish departmental human capital performance objectives and metrics.

(3) Conduct a personnel management program for the Office of the Secretary with authority to take, direct others to take, recommend or approve any personnel action with respect to such authority.

(4) Concur in the appointment and promotion of all Human Resources (HR) Directors in each Operating Administration and participate in the performance reviews of HR Directors.

(5) Provide policy and overall direction in the execution of the DOT Labor-Management Relations Program.

(6) Develop and operate the Federal Employee Workplace Drug and Alcohol Testing Program in accordance with Executive Order 12564 and The Omnibus Transportation Employee Testing Act of 1991, Public Law 102–143, Title V.

(7) Develop, coordinate, and issue wage schedules for Department employees under the Federal Wage System.

(c) The Director of Financial Management within the Office of the Assistant Secretary for Administration is redelegated the authority to:

(1) Settle and pay claims by Working Capital Fund employees for personal property losses as provided by 31 U.S.C. 3721 if the amount of the payment does not exceed $500.

(d) The Director, Transit Benefit Program is redelegated the authority to:

(1) Oversee the Department's transportation fringe benefit program under 5 U.S.C. 7905 and 26 U.S.C. 132(f).

(2) Consult with and provide guidance to other Federal agencies on transportation fringe benefit programs under 5 U.S.C. 7905 and 26 U.S.C. 132(f).

(3) Establish and maintain uniform Federal Government standards for developing and supporting Federal agencies' transportation fringe benefit programs under 5 U.S.C. 7905 and 26 U.S.C. 132(f).

§ 1.39 Executive Secretariat.

The Executive Secretariat provides organized staff services to the Secretary and Deputy Secretary to assist them in carrying out their management functions and their responsibilities for formulating, coordinating and communicating major policy decisions. The Office controls and coordinates internal and external material directed to the Secretary and Deputy Secretary and ensures that their decisions and instructions are implemented.

§ 1.40 Departmental Office of Civil Rights.

The Departmental Office of Civil Rights serves as the Department's Equal Employment Opportunity (EEO) Officer and Title VI Coordinator. The Director also serves as principal advisor to the Secretary and the Deputy Secretary on the civil rights and nondiscrimination statutes, regulations, and Executive Orders applicable to the Department, including titles VI and VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Age Discrimination Act of 1975, as amended, section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, the ADA Amendments Act of 2008, and the Genetic Information Nondiscrimination Act of 2008. The Departmental Office of Civil Rights provides guidance to the Operating Administrations and Secretarial officers on these matters. The Office periodically reviews and evaluates the civil rights programs of the Operating Administrations to ensure that recipients of financial assistance meet applicable Federal civil rights requirements.

§ 1.41 Delegations to the Director of the Departmental Office of Civil Rights.

The Director of the Departmental Office of Civil Rights is delegated authority to conduct all stages of the formal employment discrimination complaints process (including acceptance/dismissal, investigation, and final adjudication); to provide guidance to the Operating Administrations and Secretarial officers concerning the implementation and enforcement of all civil rights laws, regulations and Executive Orders for which the Department is responsible; to otherwise perform activities to ensure compliance with external civil rights programs; and to review and evaluate the Operating Administrations' enforcement of these authorities. These authorities include:

(a) Title VI and VII of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and 2000e *et seq.*

(b) Sections 501 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. 791 and 794–794a.

(c) Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*

(d) Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

(e) Americans with Disabilities Act of 1990, 42 U.S.C. 12101–121213.

(f) ADA Amendments Act of 2008 (Pub. L. 110–325) [42 U.S.C. 12101 Note].

(g) Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff *et seq.*

(h) Equal Pay Act of 1963, 29 U.S.C. 206(d).

(i) Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (Pub. L. 102–321)

(j) Chapter XIV of subtitle B, of title 29 of the CFR (Equal Employment Opportunity Commission Regulations).

(k) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90–284) [42 U.S.C. 3601 *et seq.*].

(l) 40 U.S.C. 476 (prohibition on sex discrimination).

(m) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681.

(n) In coordination with the Assistant Secretary for Transportation Policy, Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") (See also Executive Order 12948).

(o) 49 U.S.C. 306 (prohibition on discrimination in programs receiving financial assistance), 5310 (transportation for elderly persons and persons with disabilities), 5332 (nondiscrimination in mass transportation), 41705 (discrimination by air carriers against handicapped persons), 47113 (minority and disadvantaged business participation), and 47123 (nondiscrimination in airport improvement programs).

(p) 23 U.S.C. 324 and 402(b)(1)(D) (nondiscrimination in highway programs).

(q) The Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 105 Stat. 1919, section 1003.

§ 1.42 Office of Small and Disadvantaged Business Utilization.

The Director of the Office of Small and Disadvantaged Business Utilization ensures that the Department's small and disadvantaged business policies and programs are developed in a fair, efficient, and effective manner. The Office is responsible for the Department's implementation and execution of the functions and duties under the Small Business Act, and providing opportunities, technical assistance, and financial services to the small and disadvantaged business community.

§ 1.43 Delegations to the Director of the Office of Small and Disadvantaged Business Utilization.

The Director of Small and Disadvantaged Business Utilization is delegated authority to:

(a) Exercise departmental responsibility for the implementation and execution of functions and duties under sections 2[8] and 2[15] of the Small Business Act (Pub. L. 85–836) [15 U.S.C. 637 and 644].

(b) Carry out the functions vested in the Secretary by 49 U.S.C. 332 (Minority Resource Center).

§ 1.44 Office of Intelligence, Security and Emergency Response.

The Director of the Office of Intelligence, Security and Emergency Response is responsible for the development, coordination, and execution of plans and procedures for the Department to balance transportation security requirements with the safety, mobility and economic needs of the Nation through effective intelligence, security, preparedness and emergency response programs. The Director is the Department's principal Emergency Coordinator for the implementation of these programs.

§ 1.45 Delegations to the Director of the Office of Intelligence, Security and Emergency Response.

The Director of Intelligence, Security, and Emergency Response is delegated authority to:

(a) Carry out the functions related to emergency preparedness and response vested in the Secretary by the following authorities: 49 U.S.C. 101 and 301; Executive Order 12148, as amended ("Federal Emergency Management"); Executive Order 12656 ("Assignment of Emergency Preparedness Responsibilities") (as amended; see Executive Order 13286); Executive Order 12742 ("National Security Industrial Responsiveness"); Executive Order 13434 ("National Security Professional Development"); Reorganization Plan No. 3 of 1978 (5 U.S.C. app at 235 (2012); and such other statutes, executive orders, and other directives as may pertain to emergency preparedness and response.

(b) Serve as the Department's Continuity Coordinator in accordance with National Security Presidential Directive 51/Homeland Security Presidential Directive 20, *National Continuity Policy,* and Federal Continuity Directives (FCD) 1 *Federal Executive Branch National Continuity Program and Requirements* and FCD 2 *Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process.* Provide leadership for departmental programs pertaining to intelligence related to the transportation sector, transportation security policy, and civil transportation emergency preparedness and response activities.

(c) Lead departmental collaboration efforts with the Department of Homeland Security and other Departments and Agencies related to transportation security and transportation infrastructure protection as required by Homeland Security Presidential Directive 7, *Critical Infrastructure Identification, Prioritization, and Protection.*

(d) Together with the Assistant Secretary for Administration, carry out oversight and management of the duties pertaining to national security professional development assigned to the Secretary under Executive Order 13434 ("National Security Professional Development").

(e) Together with the Office of the Assistant Secretary for Aviation and International Affairs, coordinate the Department's responsibilities under National Security Presidential Directive 44, *Management of Interagency Efforts Concerning Reconstruction and Stabilization,* and Presidential Decision Directive 56, *Managing Complex Contingency Operations,* pertaining to interagency reconstruction and stabilization assistance.

(f) Lead departmental efforts pertaining to transportation-related international civil emergency preparedness activities, including coordinating DOT representation on North Atlantic Treaty Organization committees, as directed under Executive Order 12656 (as amended; see Executive Order 13286).

(g) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, in consultation and coordination with the General Counsel.

(h) Oversee the Department's protective service program.

(i) Serve as the Secretary's representative to the Transportation Security Oversight Board, in accordance with 49 U.S.C. 115, when so designated.

(j) Lead Departmental participation in internal and interagency planning efforts related to preparedness in accordance with Presidential Policy Directive 8, National Preparedness, in coordination with the Under Secretary.

(k) Serve as the Secretary's senior advisor on matters pertaining to public health, biological, and medical matters.

(l) Develop departmental plans to support the Department of Defense Civil Reserve Air Fleet (CRAF) program and allocate civil air carrier aircraft to CRAF based on Department of Defense requirements.

(m) Oversee operation of the Department's Crisis Management Center.

(n) Lead departmental efforts for all interaction with the Program Manager, Information Sharing Environment to include appointing the Associate Director for Intelligence as the DOT Information Sharing Program Manager to coordinate day-to-day Information Sharing Environment matters.

(o) Carry out departmental responsibilities under Executive Order 13587 ("Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information") including overseeing classified information sharing and safeguarding efforts for DOT. Oversee the day-to-day activities for monitoring the Top Secret and Secret classified network used by DOT and function as the Senior Official principally responsible for establishing and implementing the DOT Insider Threat Program.

(p) Serve as the department's program manager responsible for oversight of all intelligence programs, to include the DOT Counterintelligence effort as it pertains to the DOT classified networks, and coordinate intelligence matters throughout the department. Nothing in this provision is intended to prohibit or limit a component's ability to conduct intelligence activities authorized by law.

(q) Carry out the functions under the Defense Production Act of 1950, Public Law 81–774, 64 Stat. 798, as amended (50 U.S.C. app. 2061 *et seq.*), that were vested in the Secretary by Executive Order 13603 ("National Defense Resources Preparedness").

§ 1.46 Office of Public Affairs.

The Director of Public Affairs is the principal advisor to the Secretary and Secretarial Officers on public affairs issues. The Office of Public Affairs prepares news releases and supporting media materials, and maintains a new media presence. The Office also provides information to the Secretary on opinions and reactions of the public and news media on programs and transportation issues. The Office of Public Affairs is responsible for the supervision, coordination, and review of the activities of the public affairs offices within the Operating Administrations.

§ 1.47 Delegations to the Assistant to the Secretary and Director of Public Affairs.

The Assistant to the Secretary and Director of Public Affairs is delegated authority to:

(a) Monitor the overall public information program and review and approve departmental informational materials having policy-making ramifications before they are printed and disseminated.

(b) Carry out the functions to promote carpooling and vanpooling transferred to the Department of Transportation by section 310 of the Department of Energy Organization Act of 1977 (Pub. L. 95–91) [42 U.S.C. 7159].

§ 1.48 Office of the Chief Information Officer.

The Chief Information Officer (CIO) is the principal information technology (IT), cyber security, privacy, and records management advisor to the Secretary. The Office of the CIO supports the Organizational Excellence Strategic Goal by providing leadership on all matters associated with the Department's $3.5 billion IT portfolio.

§ 1.49 Delegations to the Chief Information Officer.

The Chief Information Officer is delegated authority to:

(a) Carry out all functions and responsibilities assigned to the Secretary with respect to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506);

(b) Carry out all functions and responsibilities assigned to the Secretary with respect to the Clinger-Cohen Act of 1996 (40 U.S.C. 11312 to 11314, and 11317);

(c) Carry out all functions and responsibilities assigned to the Secretary with respect to the E-Government Act of 2002, Public Law 107–347;

(d) Carry out all functions and responsibilities necessary to ensure compliance with the Federal Information Security Management Act of 2002 (44 U.S.C. 3534 and 3544);

(e) Serve as the Chief Privacy Officer, 42 U.S.C. 2000ee–2, and administer the Privacy Act of 1974, 5 U.S.C. 552a, and 49 CFR part 10 (Maintenance of and Access to Records Pertaining to Individuals) in connection with the records of the Office of the Secretary;

(f) Carry out all functions and responsibilities necessary to issue notices of Department of Transportation systems of records as required by the Privacy Act;

(g) Carry out all functions and responsibilities assigned to the Secretary with respect to the Federal Records Act (44 U.S.C. 3101–3102) and necessary to ensure compliance with the regulations of the National Archives and Records Administration (36 CFR parts 1220 through 1299; 44 U.S.C. Chapters 21, 29, 31, and 33), in coordination with the General Counsel; and

(h) Serve as the Senior Agency Official for Geospatial Information under Office of Management and Budget Memorandum M–06–07, "Designation of a Senior Agency Official for Geospatial Information" (March 3, 2006).

§ 1.50 Office of Drug & Alcohol Policy & Compliance.

The Office of Drug & Alcohol Policy & Compliance advises the Secretary on national and international drug testing and control issues and is the principal advisor to the Secretary on rules related to the drug and alcohol testing of safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries. The Office, in coordination with the Office of the General Counsel, publishes and provides interpretations of rules related to 49 CFR part 40 on the conduct of drug and alcohol tests, including how to conduct tests, and which procedures to use when testing. The Office coordinates with Federal Agencies and assists foreign governments in developing drug and alcohol testing programs and implementing the President's National Drug Control Strategy.

§ 1.60 General Authorizations and Delegations to Secretarial Officers.

(a) Acting in his or her own name and title, the Under Secretary, the General Counsel, and each Assistant Secretary, within his or her sphere of responsibility, is authorized to identify and define the requirements for, and to recommend to the Secretary, new or revised departmental policies, plans, and proposals. Each of these officers is authorized to issue departmental standards, criteria, systems and procedures that are consistent with applicable laws, Executive Orders, Government-wide regulations and policies established by the Secretary, and to inspect, review, and evaluate departmental program performance and effectiveness and advise the Secretary regarding the adequacy thereof.

(b) Except for nondelegable statutory duties including those that transfer as a result of succession to act as Secretary of Transportation, each Deputy Assistant Secretary and Deputy General Counsel is authorized to act for and perform the duties of his or her principal in the absence or disability of the principal and as otherwise directed by the principal.

(c) The Deputy Secretary, the Under Secretary, the General Counsel, and the Assistant Secretaries for Administration, Budget and Programs, and Governmental Affairs are delegated authority to:

(1) Redelegate and authorize successive redelegations of authority granted by the Secretary within their respective organizations, except as limited by law or specific administrative reservation, including authority to publish those redelegations in appendix A of this part.

(2) Authorize and approve official travel (except foreign travel) and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, the Office of the Secretary.

(3) Establish ad hoc committees for specific tasks within their assigned staff area.

(4) Establish, modify, extend, or terminate standing committees within their specific areas of responsibility when directed or authorized to do so by the Secretary.

(5) Designate members of interagency committees when such committees are specifically concerned with responsibilities of direct interest to their office.

(6) Exercise the following authorities with respect to positions in the Senior Executive Service and Senior Level within their respective areas of responsibility:

(i) Determine how executive level positions will be filled; *i.e.*, by reassignment, promotion, or appointment.

(ii) Establish selection criteria to be used in identifying eligible candidates.

(iii) Confer with the Administrators on selection criteria and candidates for an executive level position that is a counterpart of an activity or position in the Office of the Secretary.

(iv) Recommend final selection for executive level positions, subject to review by the Executive Committee of the Departmental Executive Resources Board and approval by the Secretary and the Office of Personnel Management.

(7) Enter into inter- and intra-departmental reimbursable agreements other than with the head of another department or agency (31 U.S.C. 686). This authority may be redelegated only to office directors or other comparable levels and to contracting officers.

(8) Administer and perform the functions described in their respective functional statements.

(9) Exercise the authority of the Secretary to make certifications, findings and determinations under the Regulatory Flexibility Act (Pub. L. 96–354) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part. This authority may be redelegated to those officials to whom document issuance authority has been redelegated.

(10) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to their respective organizations through Equal Employment Opportunity

counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans within their respective organizations.

(11) Exercise the authority vested in the Secretary by 49 U.S.C. 326(a) and 31 U.S.C. 1353 to accept, subject to the concurrence of the Designated Agency Ethics Official, the following: Gifts of property (other than real property) not exceeding $1,000 in value, gifts of services (in carrying out aviation duties and powers) not exceeding $1,000 in value, and reimbursement of travel expenses from non-federal sources not exceeding $3,000 in value. Acceptance of gifts or travel reimbursement that exceed these limits in value or are otherwise significant may only take place with the additional concurrence of the General Counsel. This delegation extends only to the acceptance of gifts or travel expenses and does not authorize the solicitation of gifts, which is reserved to the Secretary at § 1.21.

Subpart C—Office of Inspector General

§ 1.70 Overview.

This subpart describes the key responsibilities of the Office of Inspector General, the structure of the office, and the authority of the Inspector General.

§ 1.71 Key responsibilities.

The Inspector General conducts, supervises, and coordinates audits and investigations; reviews existing and proposed legislation and makes recommendations to the Secretary and Congress concerning their effect on the economy and efficiency of program administration, or the prevention and detection of fraud and abuse; recommends policies for and conducts, supervises, or coordinates other activities of the Department for the purpose of promoting economy and efficiency in program administration, or preventing and detecting fraud and abuse; and keeps the Secretary and the Congress fully and currently informed.

§ 1.72 Structure.

This Office is composed of:

(a) The Office of the Deputy Inspector General;

(b) The Office of the Principal Assistant Inspector General for Investigations;

(c) The Office of the Principal Assistant Inspector General for Auditing and Evaluation;

(d) The Office of the Assistant Inspector General for Administration; and

(e) The Office of the Assistant Inspector General for Legal, Legislative and External Affairs.

§ 1.73 Authority of Inspector General.

The Inspector General shall report to and be under the general supervision of the Secretary and Deputy Secretary. The Inspector General has such authority as is provided by the Inspector General Act of 1978, as amended, and as is otherwise provided by law. Authorities provided to the Inspector General by law are reserved to the Inspector General. In accordance with the statutory intent of the Inspector General Act to create an independent and objective unit, the Inspector General is authorized to make such investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary and desirable. Neither the Secretary nor the Deputy Secretary shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

§ 1.74 Delegations to Inspector General.

The Inspector General is delegated authority to:

(a) Redelegate and authorize successive redelegations of authority granted by the Secretary within the Office of Inspector General, except as limited by law or specific administrative reservation.

(b) Authorize and approve official travel, including foreign travel and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, the Office of Inspector General.

(c) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to the Office of Inspector General through Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans.

(d) Exercise the authority vested in the Secretary by 49 U.S.C. 326(a) to accept gifts of property (other than real property) or services (in carrying out aviation duties and powers), and the authority to accept travel reimbursements from non-federal sources under 31 U.S.C. 1353.

(e) Exercise the implied authority to solicit gifts associated with 49 U.S.C. 326(a), notwithstanding the reservation of authority to the Secretary in § 1.21.

(f) Carry out the emergency preparedness functions assigned to the Secretary by Executive Order 12656 (as amended; see Executive Order 13286) and by the Federal Emergency Management Agency and General Services Administration (FEMA and GSA) as they pertain to the Office of Inspector General, including those relating to continuity of operations, emergency resource management, and training.

(g) Determine the existence and amount of indebtedness and the method of collecting repayments from employees and members within the Office of Inspector General and collect repayments accordingly, as provided by 5 U.S.C. 5514.

(h) Waive claims of the United States arising out of an erroneous payment to an employee of the Office of Inspector General of pay or allowances, or travel, transportation, or relocation expenses and allowances, and deny requests for waiver of such claims, as authorized by 5 U.S.C. 5584 and the OMB memorandum, "Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316" (December 17, 1996). But for claims arising from erroneous payments to current employees, this delegation of authority is limited to claims greater than $500. For claims arising from erroneous payments to former employees, this delegation of authority is not limited by claim amount. Redelegation of this authority may be made only to the principal officials responsible for financial management or such officials' principal assistants.

(i) Settle and pay claims by employees of the Office of Inspector General for personal property losses as provided by 31 U.S.C. 3721 (Claims of personnel of agencies and the District of Columbia government for personal property damage or loss).

(j) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(k) [Reserved]

(l) Exercise the Secretary's authority under 31 U.S.C. 3711 to collect, compromise, suspend collection action on, or terminate claims of the United States which are referred to, or arise out of the activities of, the Office of Inspector General, subject to the limits on that authority imposed by 31 U.S.C. 3711 and the Federal Claims Collection Standards, 31 CFR chapter IX.

(m) Exercise the Secretary's authority under 28 U.S.C. 2672 and 28 CFR part 14, related to the administrative disposition of federal tort claims, for claims involving the Office of Inspector General. The Inspector General may request the approval of the Attorney

General to adjust, compromise, and settle any such claim if the amount of the adjustment, compromise, or award exceeds $100,000, but only after the General Counsel concurs with the request. If the Inspector General believes that a pending claim presents a novel question of law or of policy, he or she shall coordinate with the General Counsel to obtain the advice of the Assistant Attorney General in charge of the Civil Division. If the Inspector General settles a claim for an amount greater than $50,000, the Inspector General shall prepare a memorandum fully explaining the basis for the action taken and coordinate with the General Counsel before sending a copy of the memorandum to the Director, Federal Torts Claims Act Staff, Torts Branch of the Civil Division, U.S. Department of Justice.

(n) Make written requests under subsection (b)(7) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(7), for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

(o) Administer the Freedom of Information Act, 5 U.S.C. 552, and 49 CFR part 7 (Public Availability of Information) in connection with the records of the Office of the Inspector General.

(p) Administer the Privacy Act of 1974, 5 U.S.C. 552a, and 49 CFR part 10 (Maintenance of and Access to Records Pertaining to Individuals) in connection with the records of the Office of the Inspector General.

(q) Exercise the authority of the Secretary over and with respect to any personnel within the Office of Inspector General, except as prescribed by the Secretary or limited by law.

(r) Approve payment of recruitment, relocation, and retention incentives under 5 U.S.C. 5753 and 5754.

(s) Administer 49 CFR part 9 (Testimony of Employees of the Department and Production of Records in Legal Proceedings) in connection with the records of the Office of Inspector General and testimony of current and former employees of the Office of Inspector General.

Subpart D—Operating Administrations

§ 1.80 Overview.

This subpart sets forth the key responsibilities of the Operating Administrations, and the delegations of authority from the Secretary of Transportation to the Administrators.

§ 1.81 Delegations to all Administrators.

(a) Except as prescribed by the Secretary of Transportation, each Administrator is authorized to:

(1) Exercise the authority of the Secretary over and with respect to any personnel within their respective organizations.

(2) [Reserved]

(3) Exercise the authority vested in the Secretary to prescribe regulations under 49 U.S.C. 322(a) with respect to statutory provisions for which authority is delegated by other sections in this part.

(4) Carry out the functions of the Secretary concerning environmental enhancement by 49 U.S.C. 303 (Duties of the Secretary of Transportation: Policy on lands, wildlife and waterfowl refuges, and historic sites) and 23 U.S.C. 138 as they relate to matters within the primary responsibility of each Operating Administration.

(5) Carry out the functions of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), and related environmental laws as they relate to matters within the primary responsibility of each Operating Administration.

(6) Carry out the functions of the Secretary under section 106 of the Historic Preservation Act of 1966, 16 U.S.C. 470f, as they relate to matters within the primary responsibility of each Operating Administration.

(7) Administer FOIA and 49 CFR part 7 (Public Availability of Information) in connection with the records of the Operating Administration.

(8) Administer the Privacy Act of 1974, 5 U.S.C. 552a, and 49 CFR part 10 (Maintenance of and Access to Records Pertaining to Individuals) in connection with the records of the Operating Administration.

(9) Make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

(10) Carry out the emergency preparedness functions assigned to the Secretary by Executive Order 12656, (as amended; see Executive Order 13286) and by the Federal Emergency Management Agency and General Services Administration (FEMA and GSA) as they pertain to his or her administration, including those relating to continuity of operations, emergency resource management, associated Federal claimant procedures, facilities protection and warfare effects monitoring and reporting, research, stockpiling, financial aid, and training.

(11) Enter into inter- and intradepartmental reimbursable agreements other than with the head of another department or agency. This authority may be redelegated only to Office Directors, Regional Directors, District Commanders or other comparable levels and Contracting Officers.

(12) Determine the existence and amount of indebtedness and the method of collecting repayments from employees within their respective administrations and collect repayments accordingly, as provided by 5 U.S.C. 5514. Redelegation of this authority may be made only to the principal officials responsible for financial management or such officials' principal assistants.

(13) Waive claims of the United States arising out of an erroneous payment to an employee of the Operating Administration of pay or allowances, or travel, transportation, or relocation expenses and allowances, and deny requests for waiver of such claims, as authorized by 5 U.S.C. 5584 and the OMB memorandum, "Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316" (December 17, 1996). But for claims arising from erroneous payments to current employees, this delegation of authority is limited to claims greater than $500. For claims arising from erroneous payments to former employees, this delegation of authority is not limited by claim amount. Redelegation of this authority may be made only to the principal officials responsible for financial management or such officials' principal assistants.

(14) Settle and pay claims by employees of the Operating Administration for personal property losses as provided by 31 U.S.C. 3721 (Claims of personnel of agencies and the District of Columbia government for personal property damage or loss). This authority may be redelegated only to Office Directors, Regional Directors, or other comparable levels and to those individuals that report to the above officials.

(15) Exercise the authority of the Secretary to resolve informal allegations of discrimination arising in or relating to their respective organizations through Equal Employment Opportunity counseling or the Alternative Dispute Resolution process and to develop and implement affirmative action and diversity plans within their respective organizations. With regard to external civil rights programs, each Administrator exercises authority pursuant to statutes, regulations, Executive Orders, or delegations in this subpart to carry out these programs, under the guidance of the Director of the Departmental Office of Civil Rights, including conducting compliance reviews and other activities relating to

the enforcement of these statutes, regulations, and Executive Orders.

(16) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(17) Authorize and approve official non-foreign travel and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, their Operating Administrations.

(18) Exercise the authority of the Secretary to make certifications, findings and determinations under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part. This authority may be redelegated to those officials to whom document issuance authority has been delegated.

(19) Carry out the functions vested in the Secretary by 15 U.S.C. 3710(a), which authorizes agencies to permit their laboratories to enter into cooperative research and development agreements.

(20) [Reserved]

(21) Exercise the Secretary's authority under 31 U.S.C. 3711 to collect, compromise, suspend collection action on, or terminate claims of the United States which are referred to, or arise out of the activities of, the Operating Administration, subject to the limits on that authority imposed by 31 U.S.C. 3711 and the Federal Claims Collection Standards, 31 CFR chapter IX.

(22) Exercise the Secretary's authority under 28 U.S.C. 2672 and 28 CFR part 14, related to the administrative disposition of federal tort claims, for claims involving the Operating Administration. The Administrator may request the approval of the Attorney General to adjust, compromise, and settle any such claim if the amount of the adjustment, compromise, or award exceeds $100,000, but only after the General Counsel concurs with the request. If the Administrator believes that a pending claim presents a novel question of law or of policy, he or she shall coordinate with the General Counsel to obtain the advice of the Assistant Attorney General in charge of the Civil Division. If the Administrator settles a claim for an amount greater than $50,000, the Administrator shall prepare a memorandum fully explaining the basis for the action taken and coordinate with the General Counsel before sending a copy of the memorandum to the Director, Federal Torts Claims Act Staff, Torts Branch of the Civil Division, U.S. Department of Justice.

(23) Enter into memoranda of agreement with the Occupational Safety and Health Administration (OSHA) in regard to setting and enforcing occupational safety or health standards and whistleblower protection for employees in DOT-regulated industries. The General Counsel shall concur in each memorandum of understanding with OSHA prior to its execution by the Administrator of the Operating Administration concerned.

(24) Enter into memoranda of agreement with the Mine Safety Health Administration (MSHA) in regard to setting and enforcing safety standards for employees in DOT-regulated industries while on mine property. The General Counsel shall concur in each memorandum of agreement with MSHA prior to its execution by the Administrator of the Operating Administration concerned.

(25) Exercise the authority vested in the Secretary by Section 329A of the Department of Transportation and Related Agencies Appropriations Act, 1995, Public Law 103–331, 329A, 108 Stat. 2471, 2493 (September 30, 1994), to enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of state or local government, any educational institution, and any other entity in execution of the Technology Reinvestment Project authorized under the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, Public Law 102–484, 106 Stat. 2658 (October 23, 1992), and related legislation.

(26) Carry out the functions vested in the Secretary by 49 U.S.C. 40119(b), as implemented by 49 CFR part 15, in coordination with the Office of the General Counsel and the Office of Intelligence, Security and Emergency Response, relating to the determination that information is Sensitive Security Information within their respective organizations.

(27) Exercise the authority vested in the Secretary by 49 U.S.C. 326(a) and 31 U.S.C. 1353 to accept, subject to the concurrence of the Operating Administration's Deputy Ethics Official, the following: Gifts of property (other than real property) not exceeding $1,000 in value, gifts of services (in carrying out aviation duties and powers) not exceeding $1,000 in value, and reimbursement of travel expenses from non-federal sources not exceeding $3,000. Acceptance of gifts or travel reimbursement that exceed these limits in value or are otherwise significant may only take place with the additional concurrence of the General Counsel. This delegation extends only to the acceptance of gifts or travel expenses and does not authorize the solicitation of gifts, which is reserved to the Secretary at § 1.21.

(28) Exercise the authority vested in the Secretary by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321), to promulgate rules that adjust civil penalties.

(29) Carry out the functions vested in the Secretary to implement the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act), 42 U.S.C. Chapter 61, with respect to programs administered by their respective Operating Administrations. Each Operating Administration may prescribe additional Uniform Act guidance that is appropriate to those particular programs, provided that such additional guidance must be consistent with the Uniform Act and 49 CFR part 24. The lead agency for Uniform Act matters is the Federal Highway Administration (see § 1.85 and 49 CFR part 24).

§ 1.81a Redelegation by all Administrators.

Except as otherwise specifically provided in this part, each Administrator may redelegate and authorize successive redelegations of authority within the organization under that official's jurisdiction.

§ 1.82 The Federal Aviation Administration.

Is responsible for:

(a) Promulgating and enforcing regulations on all safety matters relating to the operation of airports, the manufacture, operation, and maintenance of aircraft, and the efficiency of the National Airspace System;

(b) Planning and supporting the development of an integrated national system of airports, with due consideration of safety, capacity, efficiency, environmental compatibility and sustainability;

(c) Administering federal financial assistance programs for airports including airport grants-in-aid;

(d) Preserving and enhancing the safety and efficiency of the Nation's air transportation system by implementing NextGen and other technologies, as appropriate;

(e) Registering aircraft and recording rights in aircraft;

(f) Developing, modifying, testing, and evaluating systems, procedures, facilities, and devices needed for the safe and efficient navigation and traffic control of aircraft;

(h) Locating, constructing or installing, maintaining and operating Federal aids to air navigation, wherever necessary;

(i) Developing air traffic regulations, and administering air navigation services for control of civil and military air operations within U.S. airspace, as well as administering such air navigation services as the FAA has accepted responsibility for providing in international airspace and the airspace of foreign countries;

(j) Promoting aviation safety and efficiency through technical aviation assistance to foreign aviation authorities;

(k) Developing strategies to improve runway safety at all commercial service airports;

(l) Administering the Continuous Lower Energy, Emissions and Noise program, improving connections to surface transportation, and other efforts to increase the environmental sustainability of the Nation's air transportation systems;

(m) Conducting an effective airport technology research program to improve airport safety, efficiency, and sustainability;

(n) Exercising the final authority for carrying out all functions, powers, and duties of the Administration in accordance with 49 U.S.C. 106(f) and adjudication in accordance with 49 U.S.C. 40110(d) and that such authorities supersede any conflicting provisions elsewhere in this part.

(o) Promoting and encouraging U.S. leadership in commercial space activities, and promulgating and enforcing regulations on safety matters relating to commercial space transportation.

§ 1.83 Delegations to the Federal Aviation Administrator.

The Federal Aviation Administrator is delegated authority to:

(a) Carry out the following functions vested in the Secretary by 49 U.S.C. Subtitle VII (Aviation Programs):

(1) Sections 40103(a)(2), relating to the consultation with the Architectural and Transportation Barriers Compliance Board before prescribing regulations or procedures that will have a significant impact on accessibility of commercial airports or commercial air transportation for individuals with disabilities; 40109(c), but only as it relates to the regulation of 49 U.S.C. 46301(b) (smoke alarm device penalties), and 40109(e), relating to maximum flying hours 40113(a) as it relates to the functions vested in the Secretary and delegated in this section; 40114, relating to reports and records requirements; 40115, relating to withholding information from public disclosure; 40116, relating to the prohibition on State taxation as the prohibition may affect an airport sponsor's grant assurances; 40117, relating to passenger facility charges; 40119(b), relating to the issuance of regulations on disclosure of information obtained or developed in ensuring security; and 40127(b) of chapter 401, relating to prohibition on discrimination by private airports;

(2) Section 41723 of subchapter I of chapter 417, relating to notice concerning aircraft assembly;

(3) Section 44102(b) of chapter 441, relating to defining the term "based and primarily used in the United States";

(4) Chapter 443, relating to insurance;

(5) Chapter 445, relating to facilities, personnel, and research, except section 44502(a)(3) as it relates to authorizing a department, agency, or instrumentality of the United States Government to carry out any duty or power under subsection 44502(a) with the consent of the head of the department, agency, or instrumentality;

(6) Chapter 447, relating to safety regulation;

(7) Chapter 451, relating to alcohol and controlled substances testing;

(8) Subpart IV of Part A of 49 U.S.C. Subtitle VII (chapters 461–465) relating to the Secretary's authority to enforce and impose penalties under sections of Subtitle VII that have been delegated to the Federal Aviation Administrator in this section;

(9) Part B of 49 U.S.C. Subtitle VII (chapters 471–475) relating to airport development and noise, except 49 U.S.C. 47129(a);

(10) Part C of 49 U.S.C. Subtitle VII (chapters 481–483) relating to financing; and

(11) Part E of 49 U.S.C. Subtitle VII (chapter 501) relating to Buy-American Preferences.

(b) Carry out the functions vested in the Secretary by chapters 509 and 511 (commercial space) of title 51, U.S.C. and coordinate with the Assistant Secretary for Aviation and International Affairs regarding those functions related to the promotion of the aerospace industry.

(c) Carry out the functions vested in the Secretary by part B of title II of the Clean Air Act, as amended (Pub. L. 91–604, sec. 11, 84 Stat. 1703), and by 40 CFR part 87 as it relates to exemptions from aircraft air pollution standards.

(d)(1) Except as delegated to the Under Secretary of Transportation for Policy by § 1.25, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), and (d), 5122, 5123, and 5124, relating to the transportation or shipment of hazardous materials by air.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5114, relating to the establishment of procedures for monitoring and enforcing regulations with respect to the transportation of radioactive materials on passenger-carrying aircraft.

(3) Participate, with the Administrator of the Pipeline and Hazardous Materials Safety Administration, in the Dangerous Goods Panel at the International Civil Aviation Organization, under the authority vested in the Secretary by 49 U.S.C. 5120.

(e) Serve, or designate a representative to serve, as Vice Chairman and alternate Department of Transportation member of the Interagency Group on International Aviation (IGIA) pursuant to the interagency agreement of December 9, 1960, and Executive Order 11382, and provide for the administrative operation of the IGIA Secretariat.

(f) Carry out the functions assigned to the Secretary by Executive Order 12465 relating to commercial expendable launch vehicle activities.

(g) Carry out the functions vested in the Secretary by the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102–588, 106 Stat 5119, November 4, 1992).

§ 1.84 The Federal Highway Administration.

Is responsible for:

(a) Improving mobility on our Nation's highways through national leadership, innovation, and program delivery.

(b) Developing safety strategies using a data-driven, systematic approach to address safety for motorists, bicyclists, and pedestrians from engineering, education, enforcement, and emergency medical services perspectives and coordinating with FMCSA and NHTSA as appropriate.

(c) Planning, in cooperation with the States, the nation's highway system.

(d) Improving, in cooperation with the States (via the provision of grants), infrastructure condition, safety, mobility and freight movement roads on the National Highway System, including the Interstate System and to other federal-aid roads and other surface transportation infrastructure.

(e) Identifying and deploying innovation aimed at shortening project delivery, enhancing the safety of our roadways, and protecting the environment.

(f) Surveying and constructing Federal lands transportation facilities, Federal lands access transportation facilities, tribal transportation facilities, defense highways and access roads, and parkways and roads in national parks and other federally-administered areas.

(g) Developing and administering uniform State standards for highway safety programs with respect to identification and surveillance of crash locations; highway design, construction, and maintenance, including context sensitive solutions, highway-related aspects of pedestrian safety, and traffic control devices.

(h) Administering the Department's National Bridge Inspection Standards and the National Tunnel Inspection Standards to ensure the Nation has safe, well-maintained bridges and tunnels for use by the traveling public.

(i) In coordination with NHTSA, RITA, and FMCSA, conducting vehicle-to-vehicle and vehicle-to-infrastructure research.

(j) Managing TIFIA funds, 23 U.S.C. 601–609, in conjunction with the TIFIA Joint Program Office, including managing accounting and budgeting activities, and procuring any necessary financial or technical support services for the TIFIA program.

(k) Maximizing the positive impacts on the U.S. economy by encouraging domestic manufacturing on highway projects through the enforcement of Buy America provisions.

§ 1.85 Delegations to the Federal Highway Administrator.

(a) The Federal Highway Administrator is delegated authority to administer the following provisions of title 23, U.S.C. (Highways):

(1) Chapter 1, Federal-Aid Highways, except for:

(i) Section 142 (as it relates to matters within the primary responsibility of the Federal Transit Administrator);

(ii) The following sections as they relate to matters within the primary responsibility of the National Highway Traffic Safety Administration: 153, 154, 158, 161, 163, and 164; and

(iii) Section 167(f) (National Freight Strategic Plan).

(2) Chapter 2, Other Highways, except for section 205.

(3) Chapter 3, General Provisions (as it relates to matters within the primary responsibility of the Federal Highway Administration), except for section 322.

(4) Section 409 of chapter 4, Highway Safety.

(5) Chapter 5, Research, Technology, and Education, except for section 508.

(6) Chapter 6, Infrastructure Finance, subject to the limitations set forth in §§ 1.33 (Assistant Secretary for Budget and Programs) and 1.21 (reservation to the Secretary of final approval of TIFIA credit assistance applications).

(b) The Federal Highway Administrator is delegated authority to administer the following provisions of title 49, U.S.C. (Transportation):

(1) Section 20134(a) with respect to the laws administered by the Federal Highway Administrator pertaining to highway safety and highway construction; and

(2) Sections 31111 and 31112 (as it relates to matters within the primary responsibility of the Federal Highway Administration).

(3) Section 31314 (as it relates to matters within the primary responsibility of the Federal Highway Administration).

(c) The Federal Highway Administrator is delegated authority to administer the following laws relating generally to highways:

(1) Section 502(c) of the General Bridge Act of 1946, as amended, Public Law 79–601, tit. V, 60 Stat. 847, [33 U.S.C. 525(c)].

(2) Reorganization Plan No. 7 of 1949 (63 Stat. 1070).

(3) The Federal-Aid Highway Act of 1954, as amended (Pub. L. 83–350, 68 Stat. 70).

(4) The Federal-Aid Highway Act of 1956, as amended (Pub. L. 84–627, tit. I, 70 Stat. 374).

(5) The Highway Revenue Act of 1956, as amended (Pub. L. 84–627, tit. II, 70 Stat. 374, 387).

(6) The Alaska Omnibus Act, as amended (Pub. L. 86–70, 73 Stat. 141).

(7) The Act of September 26, 1961, as amended (Pub. L. 87–307, 75 Stat. 670).

(8) The Act of April 27, 1962 (Pub. L. 87–441, 76 Stat. 59).

(9) The Federal-Aid Highway Act of 1962, as amended (Pub. L. 87–866, 76 Stat. 1145).

(10) The Joint Resolution of August 28, 1965, as amended (Pub. L. 89–139, 79 Stat. 578).

(11) The Federal-Aid Highway Act of 1966, as amended (Pub. L. 889–574, 80 Stat. 766).

(12) The Federal-Aid Highway Act of 1968, as amended (Pub. L. 90–495, 82 Stat. 815).

(13) The Federal-Aid Highway Act of 1970, as amended (except section 118) (Pub. L. 91–605, 84 Stat. 1713).

(14) Sections 103, 104, 111(b), 128(b), 131, 135, 136, 141, 147, 149, 154, 158 through 161, 163, 203, 206, 401, and 402 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93–87, 87 Stat. 250; Pub. L. 93–643, 88 Stat. 2281).

(15) Sections 102(b) (except subparagraph (2)) and (c); 105 (b)(1) and (c); 141; 146; 147; and 152 of the Federal-Aid Highway Act of 1976 (Pub. L. 94–280, 90 Stat. 425).

(16) The Highway Beautification Act of 1965, as amended (Pub. L. 89–285, 79 Stat. 1028, 23 U.S.C. 131 *et seq.*, notes).

(17) The Federal-Aid Highway Act of 1982 (Pub. L. 97–327, 96 Stat. 1611), except section 6 as it relates to matters within the primary responsibility of the Federal Transit Administrator.

(18) The Surface Transportation Assistance Act of 1982, as amended, (Pub. L. 97–424, 96 Stat. 2097) except:

(i) Sections 165 and 531 as they relate to matters within the primary responsibility of the Federal Transit Administrator;

(ii) Sections 105(f), 413; 414(b)(2); 421, 426, and Title III; and

(iii) Section 414(b)(1), unless with the concurrence of the National Highway Traffic Safety Administrator.

(19) Sections 103(e), 105(a) through (g), 106(a), and (b), 110(b), 114(d), 117(f), 120(c) and (d), 123(g) and (i), 133(f), 134, 136, 137, 139 through 145, 146(b), 147(c), 149(a) through (f), (h), (i), (k), 151 through 157, 164, and 208 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, 101 Stat. 132).

(20) Sections 105, 107(c) through (e), 123(a) and (b), 124(c), 126(d) through (g), 138(c), 142, 144, 147 through 154, 167, and 171, Title IV, as amended (as it relates to matters within the primary responsibility of the Federal Highway Administrator), and sections 502–504 of Title V of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689).

(21) Sections 201 through 205, 327 through 336, 339, 340, 349, 352, 353, and 408 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568).

(22) Sections 1002(e), 1006(h), 1009(c), 1012(b) and (d) through (f), 1015, 1016(g), 1017(c), 1021(c) and (d), 1022(c), 1023(f) through (g), 1032(d), 1038 through 1041, 1044, 1046(d), 1047, 1051, 1057 through 1060, 1072, 1073, 1105, and 6016 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914).

(23) Sections 1108(f) and (g) and 1224 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107).

(24) Sections 1101(a), 1102, 1109(f), 1111(b)(4), 1112, 1115(c), 1116(a) and (b), 1117, 1119(n), 1120(c), 1201, 1301, 1302, 1303, 1304, 1305, 1306, 1308, 1310, 1404, 1408, 1409(a) and (b), 1410, 1411, 1502, 1604, 1803, 1907, 1908, 1910, 1911, 1916, 1917, 1918, 1923, 1928, 1934, 1935, 1937, 1939, 1940, 1941, 1943, 1944, 1945, 1948, 1949, 1950, 1952, 1957, 1959, 1962, 1964, 4404 (as it relates to matters within the primary responsibility of the Federal

Highway Administrator), 5101(b), 5202(b)(3)(B), (c), and (d), 5203(e) and (f), 5204(g) and (i), 5304, 5305, 5306, 5307, 5308, 5309, 5502, 5504, 5508, 5511, 5512, 5513(b), (f), (k), and (m) (as (m) relates to (b), (f), and (k)), 5514, 6009(b) (as they relate to matters within the primary responsibility of the Federal Highway Administrator), 6017, 6018, 10210, and 10212 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144).

(25) Sections 1101(a), 1102, 1106(b), 1112(b), 1113(c), 1116, 1123, 1201(b), 1315 (as it relates to matters within the primary responsibility of the Federal Highway Administration), 1316 (as it relates to matters within the primary responsibility of the Federal Highway Administration), 1317 (as it relates to matters within the primary responsibility of the Federal Highway Administration), 1318(a) and (b) (as it relates to matters within the primary responsibility of the Federal Highway Administration), 1323 (a) and (b), 1401(b), (c) and (d), 1405, 1503(c), 1512(b), 1519(a), 1520, 1522, 1523, 1524, 1525, 1526, 1527 (as it relates to matters within the primary responsibility of the Federal Highway Administration), 1528, 1529, 1530 (as it relates to matters within the primary responsibility of the Federal Highway Administration), 1533, 1534, 1535, 32801, 32802, and 51001 of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405).

(d) The Federal Highway Administrator is delegated authority to:

(1) Carry out the functions vested in the Secretary of Transportation by section 601 of the Pipeline Safety Act of 1992 (Pub. L. 102–508, 106 Stat. 3289) relating to construction of the Page Avenue Extension Project in Missouri.

(2) Carry out the functions of the Secretary under the Appalachian Regional Development Act of 1965, 40 U.S.C. Subtitle IV.

(3) Carry out the Act of September 21, 1966, Public Law 89–599, relating to certain approvals concerned with a compact between the States of Missouri and Kansas.

(4) Carry out the functions vested in the Secretary by section 5 (as it relates to bridges, other than railroad bridges, not over navigable waters), and section 8(a) (as it relates to all bridges other than railroad bridges) of the International Bridge Act of 1972 (Pub. L. 92–434, 86 Stat. 731) [33 U.S.C. 535c and 535e(a)].

(5) Carry out the Highway Safety Act of 1966, as amended (Pub. L. 89–564, 80 Stat. 731) for highway safety programs, research, and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of crash locations, and highway-related aspects of pedestrian safety.

(6) Exercise the authority vested in the Secretary by 49 U.S.C. 20134(a) with respect to the laws administered by the Federal Highway Administrator pertaining to highway safety and highway construction

(7) Prescribe regulations, as necessary, at part 24 of this title, to implement the Uniform Act, 42 U.S.C. Chapter 61, and to act as the lead agency in carrying out all other functions vested in the Secretary by the Uniform Act, in coordination with the Under Secretary.

(8) Exercise the authority vested in the Secretary by sections 101, 118, 120(b), 123 and 124 of the Federal-Aid Highway Amendments of 1974 (Pub. L. 93–643, January 4, 1975, 88 Stat. 2281).

(9) Carry out the functions vested in the Secretary of Transportation by section 114 of Part C of the Paperwork Reduction Reauthorization Act of 1986 (contained in the Act Making Continuing Appropriations for Fiscal Year 1987 and for Other Purposes, Public Law 99–591, 100 Stat. 3341, 2241–349), relating to construction of Interstate Highway H–3 in Hawaii.

(10) Carry out the functions vested in the Secretary by Public Law 98–229, 98 Stat. 55, insofar as it relates to apportioning certain funds for construction of the Interstate Highway System in Fiscal Year 1985, apportioning certain funds for Interstate substitute highway projects, and increasing amounts available for emergency highway relief.

(11) Carry out all of the functions vested in the Secretary under section 324 of the Fiscal Year 1986 Department of Transportation Appropriations Act (Pub. L. 99–190, 99 Stat. 1288), notwithstanding the reservation of authority under § 1.21.

(12) Carry out the functions vested in the Secretary of Transportation by section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, (Pub. L. 94–210, 90 Stat. 31) relating to the Alameda Corridor Project in consultation with the Federal Railroad Administrator.

(13) Act as the lead DOT agency in matters relating to the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852 [42 U.S.C. 4321 *et seq.*] pertinent to the authority vested in the Secretary to establish, operate, and manage the Nationwide Differential Global Positioning System (NDGPS) by section 346 of the Department of Transportation and Related Agencies Appropriations Act, 1998 (Pub. L. 105–66, 111 Stat. 1425).

(14) Exercise the responsibilities of the Secretary under 49 U.S.C. 309 (high speed ground transportation).

(15) Carry out the functions vested in the Secretary by section 201(4)(d) and (e) of the Alaska National Interest Lands Conservation Act, as amended (Pub. L. 96–487, 94 Stat. 2377) [16 U.S.C. 410hh(4)(d) and (e)].

§ 1.86 The Federal Motor Carrier Safety Administration.

Is responsible for:

(a) Managing program and regulatory activities, including administering laws and promulgating and enforcing regulations on safety matters relating to motor carrier safety;

(b) Carrying out motor carrier registration and authority to regulate household goods transportation;

(c) Developing strategies for improving commercial motor vehicle, operator, and carrier safety and administering grants to implement these strategies;

(d) Inspecting records and equipment of commercial motor carriers, and investigating accidents and reporting violations of motor carrier safety regulations;

(e) Carrying out research, development, and technology transfer activities to promote safety of operation and equipment of motor vehicles for the motor carrier transportation program; and

(f) Carrying out an effective communications and outreach program which includes providing relevant safety data to the public.

§ 1.87 Delegations to the Federal Motor Carrier Safety Administrator.

The Federal Motor Carrier Safety Administrator is delegated authority to:

(a) Carry out the following functions and exercise the authority vested in the Secretary by 49 U.S.C., Subtitle IV, part B:

(1) Chapter 131, relating to general provisions on transportation policy;

(2) Chapter 133, relating to administrative provisions;

(3) Chapter 135, relating to jurisdiction;

(4) Sections 13704 and 13707 of chapter 137, relating to rates, routes, and services;

(5) Chapter 139, relating to registration and financial responsibility requirements, except section 13907(d)(2);

(6) Chapter 141, relating to operations of motor carriers;

(7) Sections 14501, 14502, and 14504a relating to Federal-State relations, and

section 14506 relating to identification of vehicles.

(8) Sections 14701 through 14705, 14707, 14708, 14710, and 14711 of chapter 147, relating to enforcement remedies, investigations and motor carrier liability; and

(9) Sections 14901 through 14913, 14915, and 14916 of chapter 149 relating to civil and criminal penalties for violations of 49 U.S.C. subtitle IV, part B.

(b) Carry out the functions vested in the Secretary by sections 104 and 204 of the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803, relating to self-insurance rules and a savings clause.

(c) Carry out the functions vested in the Secretary by 42 U.S.C. 4917, relating to procedures for the inspection, surveillance and measurement of commercial motor vehicles for compliance with interstate motor carrier noise emission standards and related enforcement activities including the promulgation of necessary regulations.

(d) Carry out the following functions and exercise the authority vested in the Secretary by chapter 51 of title 49, U.S.C.:

(1) Except as delegated to the Under Secretary of Transportation for Policy by § 1.25, carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), and (d), 5122, 5123, and 5124, relating to the transportation or shipment of hazardous materials by highway.

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5105(e), relating to inspections of motor vehicles carrying hazardous material; 49 U.S.C. 5109, relating to motor carrier safety permits, except subsection (f); 49 U.S.C. 5112, relating to highway routing of hazardous materials; 49 U.S.C. 5113, relating to unsatisfactory safety ratings of motor carriers; 49 U.S.C. 5119, relating to uniform forms and procedures; and 49 U.S.C. 5125(a) and (c)–(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements.

(e) Carry out the functions vested in the Secretary by:

(1) Chapter 313 of 49, U.S.C., relating to commercial motor vehicle operators; and

(2) Section 4123(c), (d) and (e) of SAFETEA–LU relating to grants, funding, and contract authority and availability, respectively, for commercial driver's license information system modernization.

(f) Carry out the functions vested in the Secretary by subchapters I, III, and IV of chapter 311, title 49, U.S.C., and 49 U.S.C. 31111, relating to commercial motor vehicle programs, safety regulation, and international activities, except that the authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is limited to standards that are not based upon and similar to a Federal Motor Vehicle Safety Standard promulgated under chapter 301 of title 49, U.S.C.

(g) Carry out the functions vested in the Secretary by 49 U.S.C. 5701 relating to food transportation inspections of commercial motor vehicles.

(h) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d)(2) of Executive Order 12777, as amended, with respect to highway transportation, relating to the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of motor carriers, subject to the Federal Water Pollution Control Act, Pub. L. 87–88, as amended [33 U.S.C. 1321], to operate without approved response plans.

(i) Carry out chapter 315 of title 49, U.S.C., relating to motor carrier safety.

(j) Carry out 49 U.S.C. 502, 503, 504, 506, and 523 to the extent they relate to motor carriers, motor carriers of migrant workers, and motor private carriers; 49 U.S.C. 507 to the extent it relates to motor carriers, motor carries of migrant workers, motor private carriers, or freight forwarders; and 49 U.S.C. 505, 508, 521(b), and 525.

(k) Carry out the functions and exercise the authority vested in the Secretary by 23 U.S.C. 502(a)(1)(A).

(l) Carry out the functions vested in the Secretary by the following sections of SAFETEA–LU:

(1) Section 4105(b)(1) relating to the study concerning predatory tow truck operations;

(2) Section 4126, relating to the commercial vehicle information systems and networks deployment program;

(3) Section 4127, relating to outreach and education;

(4) Section 4128, relating to grants under the safety data improvement program;

(5) Section 4130–4133, amending section 229 of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31136 note) relating to the operators of vehicles transporting agricultural commodities and farm supplies, and hours of service for miscellaneous vehicle operators;

(6) Section 4134 (49 U.S.C. 31301 note), relating to the grant program for persons to train operators of commercial motor vehicles;

(7) [Reserved]

(8) Section 4136 relating to interstate vans;

(9) Section 4138 relating to high risk carrier compliance (49 U.S.C. 31144 note);

(10) Section 4139(a)(1), relating to the training of and outreach to State personnel; section (b)(1) relating to a review of Canadian and Mexican compliance with Federal motor vehicles safety standards; and the first sentence of section (b)(2) relating to the report concerning the findings and conclusions of the review required by section (b)(1) (see 49 U.S.C. 31100 note);

(11) Section 4143, granting authority to stop commercial motor vehicles, 18 U.S.C. 3064;

(12) Section 4144, relating to a motor carrier safety advisory committee;

(13) [Reserved]

(14) Section 4147, relating to emergency conditions requiring immediate response (amending section 229 of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31136 note);

(15) Section 4213, relating to the establishment of a working group for the development of practices and procedures to enhance Federal-State relations (49 U.S.C. 14710 note);

(16) Section 4214, relating to the establishment of a system for collecting consumer complaint information and issuing regulations related to reporting requirements under the system (49 U.S.C. 14701 note); and

(17) Section 4308, granting authority to adopt regulations to carry out SAFETEA–LU, Title IV, subtitle C (49 U.S.C. 13902 note).

(m) Carry out the functions vested in the Secretary by the following sections of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405):

(1) Section 32101(b) concerning proficiency examination (49 U.S.C. 13902 note).

(2) Section 32101(c) concerning conforming amendments to proficiency examinations (49 U.S.C. 31144 note).

(3) Section 32101(d) concerning agricultural and farm transportation exemption (49 U.S.C. 31136 note).

(4) Section 32104 concerning a study of financial responsibility requirements (49 U.S.C. 13903 note).

(5) Section 32206 concerning a rental truck accident study.

(6) Section 32301(a) requiring an hours of service study.

(7) Section 32302(c)(2) regarding the establishment of state licensing agency oversight (49 U.S.C. 31149 note).

(8) Section 32303(b) relating to the establishment of a driver record notification system (49 U.S.C. 31304 note).

(9) Section 32303(c) relating to a plan for national notification system.

(10) Section 32308 regarding a study, plan, report and implementation of accelerated veteran's licensing procedures (49 U.S.C. 31301 note).

(11) Section 32603(i) relating to the administration of grant programs (49 U.S.C. 31100).

(12) Section 32605 related to a report on the commercial vehicle information system and networks.

(12) Sections 32702, 32707(b), 32708, 32709, 32710, and 32711 related to the Motorcoach Enhanced Safety Act of 2012 (49 U.S.C. 31136 note).

(13) Section 32918(b) relating to broker and forwarder financial responsibility rulemaking requirement (49 U.S.C. 13906 note).

(14) Section 32934 related to exemptions from requirements for covered farm vehicles (49 U.S.C. 31136 note).

§ 1.88 The Federal Railroad Administration.

Is responsible for:

(a) Regulating safety functions pertaining to railroads;

(b) Conducting research and development activity in support of safer and more efficient rail transportation;

(c) Investigating and issuing reports concerning collisions, derailments, and other railroad accidents resulting in serious injury to persons or to the property of a railroad;

(d) Developing safety strategies to combat the causes of collisions, derailments, and other railroad accidents, as well as to reduce overall risk in the Nation's rail systems;

(e) Promoting and strengthening the national rail system, including freight rail and high speed and higher performing intercity passenger rail.

(f) Providing financial assistance, including grants, loans and loan guarantees, for rail freight and intermodal development, as well as high-speed and intercity passenger rail development;

(g) Maximizing the positive impacts on the U.S. economy by encouraging domestic manufacturing on rail projects through the enforcement of Buy America provisions; and

(h) Strengthening local communities by supporting station-area development and strong connections among rail passenger service, intercity bus, local transit, bicycle/pedestrian, and airport facilities.

§ 1.89 Delegations to the Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to:

(a) Carry out the functions and exercise the authority vested in the Secretary by 49 U.S.C. Subtitle V, Part A (Safety, chapter 201 *et seq.*), Part B (Assistance, chapter 221 *et seq.*), Part C (Passenger Transportation, chapter 241 *et seq.*), Part D (High-speed Rail, chapter 261), and section 28101 of Part E, relating to the law enforcement authority of railroad police officers; except 49 U.S.C. 20134 with respect to highway, traffic, and motor vehicle safety and highway construction.

(b) Carry out the functions and exercise the authority vested in the Secretary by the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A, 122 Stat. 4848).

(c) Carry out the functions and exercise the authority vested in the Secretary by the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432, Div. B, 122 Stat. 4907), except Title VI (122 Stat. 4968) as it relates to capital and preventive maintenance projects for the Washington Metropolitan Area Transit Authority.

(d) Carry out the functions vested in the Secretary by section 5 (as it relates to railroad bridges not over navigable waterways) and section 8(a) (as it relates to railroad bridges) of the International Bridge Act of 1972 (Pub. L. 92–434, 86 Stat. 731) (33 U.S.C. 535c and 535e(a)).

(e) Exercise the administrative powers vested in the Secretary by 49 U.S.C. Subtitle I, Chapter 5 (section 501 *et seq.*) pertaining to railroad safety and 49 U.S.C. 103 (Federal Railroad Administration).

(f) Promote and undertake research and development relating to rail matters generally (49 U.S.C. Chapter 3 (section 301 *et seq*). and 49 U.S.C. 102).

(g) Carry out the functions vested in the Secretary by 45 U.S.C. Ch. 15 (section 601 *et seq.*) with respect to emergency rail services, except the authority to make findings required by 45 U.S.C. 662(a) and the authority to sign guarantees of certificates issued by trustees.

(h) Carry out the functions vested in the Secretary by 45 U.S.C. chapter 17 (section 801 *et seq.*) with respect to railroad revitalization and regulatory reform and the Railroad Rehabilitation and Improvement Financing program.

(i) Carry out the functions vested in the Secretary by 45 U.S.C. chapter 21 (section 1201 *et seq.*) related to the Alaska Railroad transfer.

(j) Except as delegated to the Under Secretary of Transportation for Policy by § 1.25, carry out the functions vested in the Secretary by 49 U.S.C. 5121–5124 relating to the transportation or shipment of hazardous materials by railroad.

(k) Carry out the functions vested in the Secretary by section 7 of Executive Order 12580 (delegating sections 108 and 109, respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (49 U.S.C. 9615 *et seq.*), insofar as they relate to rolling stock.

(l) Carry out the functions vested in the Secretary by 33 U.S.C. 493, relating to disputes over the terms and compensation for use of railroad bridges built under that statute.

(m) Carry out the functions vested in the Secretary by 49 U.S.C. 5701 with respect to transportation of food and other products by railroad.

(n) Carry out the functions vested in the Secretary by 23 U.S.C. 322 (Magnetic Levitation Transportation Technology Deployment Program).

(o) Carry out the functions vested in the Secretary by sections 1307 (see note to 23 U.S.C. 322), and 1946 of SAFETEA–LU as they relate to deployment of magnetic levitation transportation projects and a study of rail transportation and regulation.

(p) Carry out the function vested in the Secretary by the Bankruptcy Code (11 U.S.C. 1163), which relates to the nomination of trustees for rail carriers in reorganization, with the concurrence of the Office of the General Counsel.

(q) Carry out the functions vested in the Secretary by 23 U.S.C. 327, as it relates to railroad projects.

(r) Carry out the functions vested in the Secretary by the sections 1318(d) and 1534 of Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405), as they relate to railroads.

(s) Carry out the functions vested in the Secretary by section 2(d)(2) of Executive Order 12777, with respect to rail transportation, relating to the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of railroads to operate without approved response plans.

§ 1.90 The Federal Transit Administration.

Is responsible for:

(a) Providing grants that support the development of safe, comprehensive and coordinated public transportation systems;

(b) Creating and implementing a national public transportation safety program that includes the development of safety practices and standards;

(c) Assisting public transportation systems to achieve and maintain their infrastructure, equipment and vehicles in a state of good repair;

(d) Promoting the environmental benefits of public transportation through continuing, cooperative, and comprehensive planning that improves the performance of the intermodal transportation system.

(e) Supporting research, development, demonstration, and deployment projects dedicated to assisting in the delivery of safe, efficient and effective public transportation service;

(f) Supporting, in coordination with FHWA and FRA, strong connections between public transportation and other modes of transportation, including bicycle/pedestrian facilities and station-area development that strengthen local communities; and

(g) Maximizing the positive impacts on the U.S. economy by encouraging domestic manufacturing on transit projects through the enforcement of Buy America provisions.

§ 1.91 Delegations to the Federal Transit Administrator.

The Federal Transit Administrator is delegated authority to carry out the following:

(a) Chapter 53 of title 49, United States Code, and notes thereto.

(b) Sections 3 and 9 through 15 of the National Capital Transportation Act of 1969 (Pub. L. 91–143, 83 Stat. 320), as amended (DC Code, section 9–1101.01 *et seq.*).

(c) Sections of title 23, United States Code, and notes thereto that involve public transportation projects, including those provisions that pertain to planning, environmental reviews and use of historic resources for public transportation projects.

(d) Section 303 of title 49, United States Code, as it involves public transportation projects.

(e) The following sections of Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405):

(1) Sections 1315 [23 U.S.C. 109 note], 1316 [23 U.S.C. 109 note], 1317 [23 U.S.C. 109 note], 1318 [23 U.S.C. 109 note], and 1321, as they relate to public transit projects; and

(2) Sections 20005(b) [49 U.S.C. 5303 note], 20008(b) [49 U.S.C. 5309 note], 20013(b) [49 U.S.C. 5315 note], 20017(b) [49 U.S.C. 5324 note], 20021(b), and 20025(b) [49 U.S.C. 5335 note].

(f) Section 601 of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432, Div. B).

§ 1.92 The Maritime Administration.

Is responsible for:

(a) Fostering the development and maintenance of a United States merchant marine sufficient to meet the needs of the national security and of the domestic and foreign commerce of the United States;

(b) Operating the U.S. Merchant Marine Academy in order to train officers for the Nation's merchant marine;

(c) Promoting development of ports and intermodal transportation systems through investments in port infrastructure via grant programs and America's Marine Highway program;

(d) Promoting the growth and modernization of the U.S. merchant marine and U.S. shipyards by administering loan and guarantee programs;

(e) Overseeing the administration of cargo preference statutes;

(f) Maintaining custody of, operating, and preserving ships in the National Defense Reserve Fleet as well as other vessels under the custody of MARAD and managing, maintaining and operating its Ready Reserve Force component;

(g) Conducting research and development to improve and promote the waterborne commerce of the United States.

§ 1.93 Delegations to the Maritime Administrator.

The Maritime Administrator is delegated authority to:

(a) Carry out the functions and exercise the authorities vested in the Secretary under Subtitle V of title 46, U.S.C., except for 46 U.S.C. 51303 and 55601(c) and (d);

(b) Carry out the functions and exercise the authorities vested in the Secretary under Subtitle III of title 46, U.S.C.;

(c) Carry out the functions and exercise the authorities vested in the Secretary under the Merchant Ship Sales Act of 1946, as amended (50 U.S.C. App. 1735 *et seq.*);

(d) Carry out the functions and exercise the authorities vested in the Secretary under 50 U.S.C. App 1744 with respect to the National Shipping Authority;

(e) Exercise the authority vested in the Administrator of General Services by the Act of June 1, 1948, Public Law 80–566, 62 Stat. 281, 40 U.S.C. 318–318c and the Federal Property and Administrative Services Act of 1949, as amended, Public Law 81–152, 63 Stat. 377, and delegated to the Secretary of Transportation by the Administrator of General Services on March 23, 2000, relating to the enforcement of laws for the protection of property and persons at the United States Merchant Marine Academy, located in Kings Point, New York. This may be accomplished through appointment of uniformed personnel as special police, establishment of rules and regulations governing conduct on the affected property, and execution of agreements with other Federal, State, or local authorities.

(f) Carry out the functions and exercise the authorities vested in the Secretary by section 3(d) of the Act to Prevent Pollution from Ships (33 U.S.C. 1902(d)) as it relates to ships owned or operated by the Maritime Administration when engaged in noncommercial service;

(g) Carry out the functions vested in the Secretary by 40 U.S.C. 554 relating to authority to convey surplus real property to public entities for use in the development or operation of port facilities;

(h) Carry out the following powers and duties and exercise the authorities vested in the Secretary by the Deepwater Port Act of 1974, Public Law 93–627, as amended (33 U.S.C. 1501 *et seq.*):

(1) Section 4: The authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b));

(2) Section 4: The authority to process applications for the issuance, transfer, amendment, or reinstatement of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)), in coordination with the Commandant of the Coast Guard;

(3) Section 5(h)(2): Approval of fees charged by adjacent coastal States for use of a deepwater port and directly related land-based facilities (33 U.S.C. 1504(h)(2));

(4) Section 4: Make Adjacent Coastal State designations pursuant to 33 U.S.C. 1508(a)(2);

(5) Section 11: In collaboration with the Assistant Secretary for Aviation and International Affairs and the Assistant Secretary for Transportation Policy, consultation with the Secretary of State relating to international actions and cooperation in the economic, trade and general transportation policy aspects of the ownership and operation of deepwater ports (33 U.S.C. 1510);

(6) Section 16(b): Submission of notice of the commencement of a civil suit (33 U.S.C. 1515(b));

(7) Section 16(c): Intervention in any civil action to which the Secretary is not a party (33 U.S.C. 1515(c));

(8) Sections 8(b), 12: Authority to request the Attorney General to seek the

suspension or termination of a deepwater port license and to initiate a proceeding before the Surface Transportation Board (33 U.S.C. 1507, 1511);

(i) Carry out the functions and exercise the authority vested in the Secretary by section 109 of the Maritime Transportation Security Act of 2002, Public Law 107–295, 116 Stat. 2064, 46 U.S.C. 70101 note, to provide training for maritime security professionals;

(j) Exercise all the powers of the Secretary under 49 U.S.C. 336 with respect to civil penalties;

(k) Carry out all of the duties, authorities and powers of the Secretary under the Reefs for Marine Life Conservation law, 16 U.S.C. 1220 *et seq.*;

(l) In consultation and coordination with the Office of Intelligence, Security and Emergency Response, carry out the functions under the Defense Production Act of 1950, Public Law 81–774, 64 Stat. 798, as amended (50 U.S.C. app. 2061 *et seq.*), that were vested in the Secretary by Executive Order 13603 ("National Defense Resources Preparedness") as such authorities relate to the use of sealift support and port facilities, and other maritime industry related facilities and services, and maritime-related voluntary agreements pursuant to Section 708 of the Act;

(m) Carry out the functions related to the National Defense Reserve Fleet vested in the Secretary pursuant to 50 U.S.C. App. 1744;

(n) Carry out all of the duties, authorities and powers of the Secretary under the following statutes:

(1) 10 U.S.C. 2218, the National Defense Sealift Fund;

(2) 40 U.S.C. 3134, Bond waiver authority for certain contracts;

(3) 46 U.S.C. 501(b), Waiver of navigation and vessel-inspection laws and determination of non-availability of qualified U.S. flag vessels;

(4) 46 U.S.C. 3316, granting authority to appoint a representative to Executive Board of the American Bureau of Shipping (ABS);

(5) 46 U.S.C. 12119(a)(5), authority to waive or reduce the qualified proprietary cargo requirements and determine citizenship;

(6) 50 U.S.C. 196, Emergency foreign vessel acquisition; purchase and requisition of vessels lying idle in United States waters;

(7) 50 U.S.C. 197, Voluntary purchase or charter agreement;

(8) 50 U.S.C. 198, granting authority over requisitioned vessels;

(o) Carry out all of the duties, authorities and powers of the Secretary with respect to 16 U.S.C. 1220 *et seq.* (use of obsolete ships as reefs for marine life conservation);

(p) Carry out all of the duties, powers and authorities delegated to the Secretary of Transportation by the Administrator of General Services with respect to the leasing and management of property under 41 CFR 102–72.30, Delegations of Authority;

(q) Carry out all of the duties, authorities and powers vested in the Secretary by 46 U.S.C. 70101 note, to provide training for maritime security professionals;

(r) Carry out the duties, authorities and powers of the Secretary under the following statutes:

(1) Title XV, Subtitle B of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624 (104 Stat. 3359, 3665), 7 U.S.C. 1421 and Chapter 553 of Title 46, U.S.C., authorizing the Secretary to designate "American Great Lakes" vessels that are exempt from the restrictions relating to the carriage of preference cargoes;

(2) 46 U.S.C. 2302(e) (determination of substandard vessels);

(3) Section 304(a) of Coast Guard and Maritime Transportation Act of 2006, 33 U.S.C. 1503(i), a program to promote liquefied natural gas tanker transportation;

(4) Section 306 of Public Law 111–281, concerning the phaseout of vessels supporting oil and gas development;

(s) Carry out the functions and exercise the authorities vested in the President by Section 1019 of John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) and delegated to the Secretary by the President;

(t) Lead efforts pertaining to civil emergency planning for sealift support for North Atlantic Treaty Organization (NATO) operations, including coordinating DOT representation on sealift-related committees, in coordination with the Office of Intelligence, Security and Emergency Response;

(u) Carry out the duties, functions, authorities, and powers of the Secretary under 49 U.S.C. 109(e), (f), (h), (j)(3);

(v) Carry out all of the duties, authorities, and powers of the Secretary of Transportation, with respect to matters involving the Clarification Act, Public Law 78–17, 57 Stat. 45, as amended (50 U.S.C. App. 1291);

(w) Carry out all of the duties, authorities, and powers of the Secretary under 46 U.S.C. 12102(d).

§ 1.94 The National Highway Traffic Safety Administration.

Is responsible for:

(a) *In highway safety,* setting uniform guidelines for a coordinated national highway safety formula grant program carried out by the States and local communities; conducting research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information; administering highway safety grant programs to encourage State efforts in such areas as occupant protection, impaired and distracted driving, traffic safety data information system improvements, motorcyclist safety, child safety restraints, and graduated driver's licensing; determining State compliance with highway traffic safety law requirements; administering a nationwide high visibility enforcement program; administering the National Driver Register; and leading and coordinating efforts to establish, expand, and improve State, local, tribal, and regional emergency medical services and 9–1–1 systems.

(b) *In motor vehicle safety,* establishing and enforcing safety standards and regulations for the manufacture and importation of motor vehicles and motor vehicle equipment; conducting research, development, and testing concerning motor vehicle safety, including vehicle-to-vehicle and vehicle-to-infrastructure technologies and other new or advanced vehicle technologies; and investigating safety-related defects and non-compliance in motor vehicles and motor vehicle equipment and administering related recalls.

(c) *In automobile fuel economy,* establishing automobile fuel economy standards for passenger and non-passenger automobiles and fuel efficiency standards for medium and heavy vehicles.

(d) *In consumer protection and information,* establishing requirements and carrying out programs for passenger motor vehicle information, such as the New Car Assessment Program; bumper standards for passenger motor vehicles; odometer requirements; and passenger motor vehicle theft prevention standards.

§ 1.95 Delegations to the National Highway Traffic Safety Administrator.

The National Highway Traffic Safety Administrator is delegated authority to:

(a) Exercise the authority vested in the Secretary under chapters 301, 303, 321, 323, 325, 327, 329, and 331, of Title 49, U.S.C., except for 49 U.S.C. 32916(b).

(b) Exercise the authority vested in the Secretary by 49 U.S.C. 20134(a) with respect to laws administered by the National Highway Traffic Safety

Administration pertaining to highway, traffic and motor vehicle safety.

(c) Carry out, in coordination with the Federal Motor Carrier Safety Administrator, the authority vested in the Secretary by subchapter III of chapter 311 of title 49, U.S.C., to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a Federal Motor Vehicle Safety Standard promulgated, either simultaneously or previously, under chapter 301 of title 49, U.S.C.

(d) Carry out the Highway Safety Act of 1966, as amended (Pub. L. 89–564, 80 Stat. 731), for highway safety programs, research, and development except those relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of crash locations, and highway-related aspects of pedestrian safety.

(e) Exercise the authority vested in the Secretary under chapter 4 of title 23, U.S.C., except for 23 U.S.C. 409.

(f) Carry out the functions and exercise the authority vested in the Secretary for the following provisions of title 23, U.S.C. (with respect to matters within the primary responsibility of the National Highway Traffic Safety Administration): 153, 154, 158, 161, 163, 164, and 313 (Buy America).

(g) Carry out the consultation functions vested in the Secretary by Executive Order 11912, as amended (“Delegation of Authorities Relating to Energy Policy and Conservation”) relating to automobiles.

(h) Exercise the authority vested in the Secretary by section 210(2) of the Clean Air Act, Public Law 90–148, as amended [42 U.S.C. 7544(2)].

(i) Carry out the functions and exercise the authority vested in the Secretary by the following sections of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59:

(1) Section 1906 [23 U.S.C. 402 note], relating to the grant program to prohibit racial profiling;

(2) Section 2010 [23 U.S.C. 402 note], relating to motorcyclist safety;

(3) Section 2011 [23 U.S.C. 405 note], relating to child safety and child booster seat incentive grants;

(4) Section 10202 [42 U.S.C. 300d–4], relating to emergency medical services, as amended by section 31108 of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141;

(5) Section 10305(b) [49 U.S.C. 30101 note], relating to the publication of non-traffic incident data collection; and

(6) Section 10309(a), relating to the testing of 15-passenger van safety.

(j) Carry out the following functions and exercise the authority vested in the Secretary under the Energy Independence and Security Act of 2007 (Pub. L. 110–140):

(1) Section 106 [49 U.S.C. 32902 note], relating to the continued applicability of existing standards;

(2) Section 107 [49 U.S.C. 32902 note], relating to the National Academy of Sciences studies;

(3) Section 108, relating to the National Academy of Sciences study of medium-duty and heavy-duty truck fuel economy;

(4) Section 110 [49 U.S.C. 32908 note], relating to the periodic review of accuracy of fuel economy labeling;

(5) Section 113 [49 U.S.C. 32904 note], relating to the exemption from separate calculation requirement;

(6) Section 131(b)(2) and (c)(1) [42 U.S.C. 17011(b)(2), (c)(1)], relating to the Plug-in Electric Drive Vehicle Program;

(7) Section 225(a), relating to the study of optimization of flexible fueled vehicles to use E–85 fuel;

(8) Section 227(a), relating to the study of optimization of biogas used in natural gas vehicles;

(9) Section 242 [42 U.S.C. 17051], relating to renewable fuel dispenser requirements; and

(10) Section 248(a) [42 U.S.C. 17054(a)], relating to biofuels distribution and advanced biofuels infrastructure.

(k) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under section 7103 of the Transportation Equity Act for the 21st Century, Public Law 105–178.

(l) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under sections 3(d), 10, 11 and 13 through 17 [uncodified provisions] of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Public Law 106–414.

(m) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under Anton’s Law, Public Law 107–318.

(n) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under the Cameron Gulbransen Kids Transportation Safety Act of 2007 or the K.T. Safety Act of 2007, Public Law 110–189.

(o) Carry out the functions and exercise the motor vehicle safety authority vested in the Secretary under the Pedestrian Safety Enhancement Act of 2010, Public Law 111–373.

(p) Carry out the functions and exercise the authority vested in the Secretary by the following sections of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141:

(1) Sections 31101(d) and (f) (23 U.S.C. 402 note), Authorization of Appropriations;

(2) Sections 31203(b), Civil Penalty Criteria Rule, 31301, Public Availability of Recall Information, 31302, NHTSA Outreach to Manufacturer, Dealer, and Mechanic Personnel, 31309(a), Study of Crash Data Collection, 31401, NHTSA Electronics, Software, and Engineering Expertise, 31402, Electronics Systems Performance, 31501, Child Safety Seats, 31502, Child Restraint Anchorage Systems, 31503, Rear Seat Belt Reminders, 31504, Unattended Passenger Reminders, 31505, New Deadline, and 31601, Rulemaking on Visibility of Agricultural Equipment;

(3) Section 32201, Crashworthiness Standards; and

(4) Sections 32703, Regulations for Improved Occupant Protection, Passenger Evacuation, and Crash Avoidance, 32704, Fire Prevention and Mitigation, 32705, Occupant Protection, Collision Avoidance, Fire Causation, and Fire Extinguisher Research and Testing, and 32706, Concurrence of Research and Rulemaking.

(q) Carry out the functions and exercise the authority vested in the Secretary to implement section 3(g)–(h) of the Automobile Information Disclosure Act (Pub. L. 85–506, 72 Stat. 325), as amended (15 U.S.C. 1232(g)–(h)).

§ 1.96 The Pipeline and Hazardous Materials Safety Administration.

Is responsible for:

(a) *Pipelines.* (1) Administering a national program of safety in natural gas and hazardous liquid pipeline transportation including identifying pipeline safety concerns, developing uniform safety standards, and promulgating and enforcing safety regulations;

(2) Increasing the gas and liquid pipeline industry’s focus on safety beyond compliance with minimum standards, with particular attention to developing strong safety cultures in regulated entities;

(3) Enhancing information awareness systems at the State and local levels to reduce pipeline damage from excavation and providing grants to support these systems; and

(4) Encouraging the timely replacement of aging and deteriorating pipelines in distribution systems, especially in areas with high potential

negative consequences to public safety and the environment.

(b) *Hazardous materials.* (1) Administering a national program of safety, including security, in multimodal hazardous materials transportation including identifying hazardous materials safety concerns, developing uniform safety standards, and promulgating and enforcing safety and security regulations; and

(2) Conducting outreach and provide available grants assistance to increase awareness and emergency preparedness.

§ 1.97 Delegations to the Pipeline and Hazardous Materials Safety Administrator.

The Pipeline and Hazardous Materials Safety Administrator is delegated responsibility to:

(a) *Pipelines.* (1) Exercise the authority vested in the Secretary under chapter 601 of title 49, U.S.C.

(2) Exercise the authority vested in the Secretary under section 28 of the Mineral Leasing Act, as amended (30 U.S.C. 185(a) and 30 U.S.C. 185(w)(3)).

(3) Exercise the authority vested in the Secretary under section 21 of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1520) relating to the establishment, enforcement and review of regulations concerning the safe construction, operation or maintenance of oil or natural gas pipelines on Federal lands and the Outer Continental Shelf.

(4) Carry out the functions vested in the Secretary by section 5 (as it relates to pipelines not over navigable waterways) and section 8(a) (as it relates to pipelines) of the International Bridge Act of 1972 (Pub. L. 92–434, 86 Stat. 731) (33 U.S.C. 535c and 535e(a)).

(5) Exercise the authority vested in the Secretary under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*) with respect to the establishment, enforcement and review of regulations concerning pipeline safety.

(6) Carry out the functions vested in the Secretary by section 7 of Executive Order 12580 (delegating sections 108 and 109, respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (49 U.S.C. 9615 *et seq.*), insofar as they relate to pipelines.

(7) Exercise the authority vested in the Secretary by 49 U.S.C. 60301 as it relates to pipeline safety user fees.

(8) Exercise the authority vested in the Secretary by 49 U.S.C. 6101 *et seq.* as it relates to pipeline damage prevention One Call programs.

(9) Exercise the authority vested in the Secretary by the Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355, 116 Stat. 2985).

(10) Exercise the authority vested in the Secretary by the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112–90).

(b) *Hazardous materials.* Except as delegated to the Under Secretary of Transportation for Policy by § 1.25:

(1) Carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c), (d) and (e), 5122, 5123, and 5124, with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials; and

(2) Participate, with the Administrator of the Federal Aviation Administration, in the Dangerous Goods Panel at the International Civil Aviation Organization, under the authority vested in the Secretary by 49 U.S.C. 5120; and

(3) Carry out, in coordination with the Administrators of the Federal Aviation Administration (for matters relating to the transport of hazardous materials by aircraft), the Federal Motor Carrier Safety Administration (for matters relating to the transport of hazardous materials by public highway), and the Federal Railroad Administration (for matters relating to the transport of hazardous materials by rail), the functions vested in the Secretary by all other provisions of the Federal hazardous material transportation law (49 U.S.C. 5101 *et seq.*) except as delegated by §§ 1.83(d)(2) and (3) (FAA) and 1.87(d)(2) (FMCSA) and by paragraph 2(99) of Department of Homeland Security Delegation No. 0170.

(4) Exercise the authority vested in the Secretary by sections 33005 (49 U.S.C. 5121 note), 33006, 33008 (49 U.S.C. 5121 note), 33009(b)(2) (49 U.S.C. 5121 note), and 33012 (49 U.S.C. 5117 note) of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405).

(c) Exercise the authority delegated to the Secretary in the following sections of Executive Order 12777:

(1) Section 2(b)(2) relating to the establishment of procedures, methods, equipment and other requirements to prevent discharges from, and to contain oil and hazardous substances in, pipelines, motor carriers, and railroads; and

(2) Section 2(d)(2) relating to the issuance of regulations requiring the owners or operators of pipelines, motor carriers, and railroads, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*), to prepare and submit response plans. For pipelines subject to the Federal Water Pollution Control Act, this authority includes the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of pipelines to operate without approved response plans.

§ 1.98 The Research and Innovative Technology Administration.

Is responsible for:

(a) Coordinating, facilitating, and reviewing the Department's research and development programs and activities, except as related to NHTSA;

(b) After consultation with Operating Administration and OST offices, making recommendations to the Secretary on all Operating Administration and OST research budgets;

(c) Providing leadership on technical, navigation, communication, and systems engineering activities, and spectrum management on behalf of the civil and civilian PNT communities;

(d) Directing and administering university transportation research grants;

(e) In coordination with FHWA, NHTSA, and FMCSA, conducting vehicle-to-vehicle and vehicle-to-infrastructure research;

(f) Advancing Intelligent Transportation Systems (ITS) research and deployment of real-time multimodal travel information for travelers, carriers, and public agencies;

(g) Providing oversight of the activities of the Volpe National Transportation Systems Center, the ITS Joint Program Office, the Bureau of Transportation Statistics, and the Transportation Safety Institute; and

(h) Providing technical support to advance the mission of the Secretary's Safety Council.

§ 1.99 Delegations to the Research and Innovative Technology Administrator.

The Research and Innovative Technology Administrator is delegated authority for the following:

(a) *Coordination of departmental research and development programs and activities.* (1) Coordinate, facilitate, and review all departmental research and development programs and activities, except those carried out by the National Highway Traffic Safety Administration, as described in section 4(b) of the Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108–426, 118 Stat. 2423).

(2) After consultation with Operating Administration and OST offices, RITA shall make recommendations to the

Secretary on all Operating Administration and OST research budgets.

(b) *Science and technology.* (1) With respect to scientific and technological matters, serve as principal advisor to the Secretary and representative of the Department to the academic community, the private sector, professional organizations, and other federal, state and local government agencies.

(2) Serve as principal liaison official for the Department of Transportation with the Office of Science and Technology Policy in the Executive Office of the President, the National Science and Technology Council, and the President's Committee of Advisors on Science and Technology.

(3) Serve as primary official responsible for coordination and oversight of the Department's implementation of section 2 of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a), relating to the transfer of Federal technology to the marketplace; and section 12(d) of the National Technology Transfer and Advancement Act of 1996 (Pub. L. 104–113), as implemented by OMB Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.

(4) Serve as Chair and Executive Secretary of the Department of Transportation's Research, Development and Technology Planning Council and Planning Team.

(5) Advocate Department of Transportation policy and program coordination efforts associated with transportation research.

(6) Represent the Department of Transportation on departmental, national and international committees and meetings dealing with transportation research and development (R & D).

(7) Manage the strategic planning process for transportation R & D across the Department of Transportation and, through the National Science and Technology Council, across the Federal Government.

(8) Carry out the transportation research and development strategic planning function vested in the Secretary by 23 U.S.C. 508.

(9) Conduct transportation system-level assessments and policy research.

(10) Facilitate the creation of transportation public/private partnerships.

(11) Foster innovation in the transportation sector.

(12) Disseminate information on departmental, national, and international transportation R & D activities.

(13) Provide legal support for Departmental intellectual property and patent issues.

(14) Manage department- and government-wide (inter/multimodal) transportation R & D programs.

(15) Oversee such advisory boards that deal with transportation system-level R & D assessments and issues, such as the Transportation Research Board Committee on the Federal Transportation R & D Strategic Planning Process.

(c) *Advanced vehicle technology.* Carry out the functions vested in the Secretary by section 5111 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5506), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108–310, September 30, 2004, 118 Stat. 1144, and section 5513(j) of SAFETEA–LU.

(d) *Remote sensing technology.* Carry out the functions vested in the Secretary by section 5113 of the Transportation Equity Act for the 21st Century (23 U.S.C. 502 Note), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108–310, September 30, 2004, 118 Stat. 1144, and section 5506 of SAFETEA–LU.

(e) *University transportation research.* Carry out the functions vested in the Secretary by section 5110 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5505), as extended by the Surface Transportation Extension Act of 2004, Part V, Public Law 108–310, September 30, 2004, 118 Stat. 1144, and sections 5401 and 5402 of SAFETEA–LU.

(f) *Volpe National Transportation Systems Center.* Exercise the authority vested in the Secretary with respect to the activities of the Volpe National Transportation Systems Center as described in 49 U.S.C. 112(d)(1)(E) and carry out the functions vested in the Secretary by 49 U.S.C. 328 with respect to the working capital fund for financing the activities of the Volpe National Transportation Systems Center.

(g) Exercise authority over the Transportation Safety Institute.

(h) Carry out the functions vested in the Secretary by 49 U.S.C. 111 relating to transportation statistics, analysis, and reporting.

(i) Carry out the functions vested in the Secretary by 49 U.S.C. 5503(d) (Office of Intermodalism).

(j) *Aviation information.* (1) Carry out the functions vested in the Secretary by 49 U.S.C. 329(b)(1) relating to the collection and dissemination of information on civil aeronautics.

(2) Carry out the functions vested in the Secretary by section 4(a)(7) of the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443) relating to the reporting of the extension of unsecured credit to political candidates (section 401, Federal Election Campaign Act of 1971; 2 U.S.C. 451), in conjunction with the General Counsel and the Assistant Secretary for Aviation and International Affairs.

(3) Carry out the functions vested in the Secretary by: 49 U.S.C. 40113 (relating to taking such actions and issuing such regulations as may be necessary to carry out its air commerce and safety responsibilities), 49 U.S.C. 41702 (relating to the duty of carriers to provide safe and adequate service), 49 U.S.C. 41708 and 41709 (relating to the requirement to keep information and the forms in which it is to be kept), and 49 U.S.C. 41701 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) as appropriate to carry out the responsibilities under this paragraph in conjunction with the General Counsel and the Assistant Secretary for Aviation and International Affairs.

(k) *Hazardous materials information.* In coordination with the Under Secretary, work with the Operating Administrations to determine data needs, collection strategies, and analytical techniques appropriate for implementing 49 U.S.C. 5101 *et seq.*

(l) Carry out the functions vested in the Secretary by section 1801(e) of SAFETEA–LU (establishing and maintaining a national ferry database).

(m) Carry out the functions vested in the Secretary by section 5513(c), (d), (g), (h), (i), (l), and (m) of SAFETEA–LU (establishing various research grants).

(n) Carry out the functions vested in the Secretary by section 5201(m) of SAFETEA–LU (biobased transportation research program).

(o) Carry out the functions vested in the Secretary by 23 U.S.C. 509 (establishing and supporting a national cooperative freight transportation research program).

(p) *Positioning, navigation and timing (PNT) and spectrum management.* Carry out the functions described in the Secretarial memo of August 1, 2007, "Positioning, Navigation and Timing (PNT) and Spectrum Management Realignment under the Research and Innovative Technology Administration (RITA)."

(q) Carry out the Secretary's authority to establish, operate and manage the Nationwide Differential Global Positioning System (NDGPS) as described in Section 346 of Public Law 105–66 (Department of Transportation and Related Agencies Appropriations Act of 1998).

§ 1.100 The Saint Lawrence Seaway Development Corporation.

Is responsible for the development, operation, and maintenance of that part of the Saint Lawrence Seaway within the territorial limits of the United States.

§ 1.101 Delegations to the Saint Lawrence Seaway Development Corporation Administrator.

The Administrator of the Saint Lawrence Seaway Development Corporation is delegated authority to:

(a) Carry out the functions vested in the Secretary by sections 4, 5, 6, 7, 8, 12 and 13 of section 2 of the Port and Tanker Safety Act of 1978 (Pub. L. 95–474, 92 Stat. 1471) [33 U.S.C. 1223–1225, 1227, and 1231–1232] as they relate to the operation of the Saint Lawrence Seaway.

(b) Carry out the functions vested in the Secretary by section 5 and section 8(a) of the International Bridge Act of 1972 (Pub. L. 92–434, 86 Stat. 731) [33 U.S.C. 535c and 535e(a)] as it relates to the Saint Lawrence River.

(c) Carry out the functions vested in the Secretary by section 3(d) of the Act to Prevent Pollution from Ships [33 U.S.C. 1902e] as it relates to ships owned or operated by the Corporation when engaged in noncommercial service.

Appendix A to Part 1—Delegations and Redelegations by Secretarial Officers

1. *Director of Budget.* The Assistant Secretary for Budget and Programs and CFO has redelegated to the Director of Budget authority to—

(a) Request apportionment and reapportionment of funds by the Office of Management and Budget, provided that no request for apportionment or reapportionment which anticipates the need for a supplemental appropriation shall be submitted to the Office of Management and Budget without appropriate certification by the Secretary.

(b) Issue allotments or allocations of funds to components of the Department.

2. *Chief Counsels.* The General Counsel has delegated to the Chief Counsels the authority delegated to the General Counsel by Amendment 1–41 to part 1 of title 49, Code of Federal Regulations, 35 FR 17658, November 17, 1970, as follows:

Section 855 of the Revised Statutes, as amended by Public Law 91–393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency to the title to land being acquired by the United States. The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (28 CFR 0.66). The Assistant Attorney General, Land and Natural Resources Division, has further delegated certain responsibilities in connection with the approval of the sufficiency of the title to land to the Department of Transportation as follows:

Delegation to the Department of Transportation for the Approval of the Title to Lands Being Acquired for Federal Public Purposes

Pursuant to the provision of Public Law 91–393, approved September 1, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440–70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

1. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at $100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

As stated in the above-mentioned Act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

The Chief Counsels of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Federal Transit Administration, the Saint Lawrence Seaway Development Corporation, Maritime Administration, and Research and Innovative Technology Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of their respective organizations. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegation of this authority may only be made by the Chief Counsels to attorneys within their respective organizations.

If the organization does not have an attorney experienced and capable in the examination of title evidence, a Chief Counsel may, with the concurrence of the General Counsel, request the Attorney General to (1) furnish an opinion as to the validity of a title to real property or interest therein, or (2) provide advice or assistance in connection with determining the sufficiency of the title.

Issued in Washington, DC, on February 10, 2016.

Anthony R. Foxx,

Secretary of Transportation.

[FR Doc. 2016–04230 Filed 4–4–16; 8:45 am]

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Part IV

The President

Proclamation 9411—National Cancer Control Month, 2016
Proclamation 9412—National Child Abuse Prevention Month, 2016
Proclamation 9413—National Financial Capability Month, 2016
Proclamation 9414—National Sexual Assault Awareness and Prevention Month, 2016

Federal Register
Vol. 81, No. 65
Tuesday, April 5, 2016

Presidential Documents

Title 3—

The President

Proclamation 9411 of March 31, 2016

National Cancer Control Month, 2016

By the President of the United States of America

A Proclamation

Undaunted by challenge and unceasing in pursuit of progress, our Nation has pushed the boundaries of possibility throughout our history. Today, while cancer remains among the leading causes of death around the world and the second leading cause of death here at home, cancer research is on the cusp of major breakthroughs, offering incredible promise to those suffering from this disease. This month, we remember the loved ones we have lost, pledge support for the families we can still save, and reaffirm our commitment to curing cancer once and for all.

Cancer can affect people of all ages, races, and backgrounds, but certain risk factors exist that can often be mitigated. Limiting alcohol consumption, controlling sun exposure, exercising, getting recommended cancer screenings, and maintaining a healthy diet are all ways to reduce your risk of getting cancer. Additionally, smoking remains one of the top causes of cancer, responsible for 1 in 3 cancer deaths in the United States. By promoting resources to help people quit smoking and limiting exposure to secondhand smoke, we can reduce individuals' cancer risks. Help for quitting smoking can be found at www.SmokeFree.gov or by calling 1–800–QUIT–NOW. I urge all Americans to visit www.Cancer.gov or www.CDC.gov/Cancer to learn more.

My Administration is committed to reaching a future free from cancer in all its forms. Earlier this year, I created the White House Cancer Moonshot Task Force. Chaired by Vice President Joe Biden, this effort aims to accelerate our progress toward prevention, treatment, and cures by putting ourselves on a path to achieving at least a decade's worth of advances in 5 years. Together with patients, philanthropies, private industry, and the medical and scientific communities, the United States can be the country that finally finds a cure for this disease, and we have already proposed a $1 billion initiative to jumpstart this critical work. The Affordable Care Act continues to help people with cancer and at risk for cancer by prohibiting insurers from denying coverage to anyone based on a preexisting condition and requiring insurers to cover recommended preventive benefits without cost-sharing. And the Precision Medicine Initiative that I launched last year continues to work toward a new era of medicine that offers targeted treatment at the right time to individual patients by accounting for their unique genes, health histories, and other personal factors.

Our Nation has made extraordinary strides in the fight against cancer, but much work remains to be done. With more than one and a half million new cases of cancer expected in the United States this year, we owe it to everyone currently living with it and to anyone at risk to support all those working to defeat it. During National Cancer Control Month, let us remember those who lost their battle with cancer, and let us renew our efforts to save lives and spare heartbreak by reaching a future without this devastating disease.

The Congress of the United States, by joint resolution approved March 28, 1938 (52 Stat. 148; 36 U.S.C. 103), as amended, has requested the

President to issue an annual proclamation declaring April as "Cancer Control Month."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim April 2016 as National Cancer Control Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of what Americans can do to prevent and control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–07955
Filed 4–4–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9412 of March 31, 2016

National Child Abuse Prevention Month, 2016

By the President of the United States of America

A Proclamation

All children deserve to grow up in a caring and loving environment, yet across America, hundreds of thousands of children are neglected or abused each year, often causing lasting consequences. Although effectively intervening in the lives of these children and their families is an important responsibility at all levels of government, preventing abuse and neglect is a shared obligation. During National Child Abuse Prevention Month, we recommit to giving every child a chance to succeed and to ensuring that every child grows up in a safe, stable, and nurturing environment that is free from abuse and neglect.

Preventing child abuse is an effort that we must undertake as one American family, and in our schools, neighborhoods, and communities, we must look after every child as if they are our own. Between four and eight children die every day from abuse or neglect, but together we can prevent these tragedies from occurring. Children who are being abused or neglected may display constant alertness, sudden changes in behavior and school performance, or untreated physical or medical issues. Child abuse may take many forms, including neglect and physical, sexual, or emotional abuse. More information on preventing child abuse can be found at www.ChildWelfare.gov/Preventing.

All families can benefit from strong support systems and resources in the face of these challenges, and as parents, friends, neighbors, and fellow human beings, keeping our kids safe is among our highest priorities. My Administration is dedicated to fostering healthy and supportive conditions that enable our children to develop and thrive and that ensure parents and caretakers have the resources they need to properly care for their children. We are supporting efforts that lift up vulnerable families, improve the coordination of programs and services within communities, and promote meaningful and measurable changes in the lives of children across America to improve their social and emotional well-being. The effects of child abuse and neglect can negatively impact a child throughout their life. Together, we must address this issue so that our children and our children's children never know the pain caused by child abuse.

Our Nation's enduring commitment to prevent child abuse and neglect demands that individuals and communities partner together to provide safe and nurturing environments for all of America's daughters and sons. We must all join in the work of uplifting and safeguarding our youngest individuals and ensuring they are limited by nothing but the size of their dreams and the range of their aspirations. This month, let us aim to eradicate child abuse from our society, and let us secure a future for our children that is bright and full of hope, opportunity, and security.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2016 as National Child Abuse Prevention Month. I call upon all Americans to observe this month with programs and activities that help prevent child abuse and provide for children's physical, emotional, and developmental needs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–07957
Filed 4–4–16; 11:15 am]
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Presidential Documents

Proclamation 9413 of March 31, 2016

National Financial Capability Month, 2016

By the President of the United States of America

A Proclamation

When every American has the tools they need to get ahead and contribute to our country's success, we are all better off. Since the recession, we have built our economy to be better and stronger than before, but we still have work to do to make hardworking families' paychecks go further. Ensuring people have the resources to make informed decisions about their finances is critical in this effort, and during National Financial Capability Month, we recommit to equipping individuals with the knowledge and protections necessary to secure a stable financial future for themselves and their families.

At some of life's most important junctures—including buying a home, pursuing an education, or saving for retirement—having access to reliable information about our country's financial system can help people avoid being ripped off or sucked into cycles of debt they cannot get out of. That is why my Administration is promoting tools to protect and empower individuals, working to increase borrowers' understanding of what they are getting into before they take out a loan, and educating more people on how to think about their money. I encourage all Americans to call 1–800–FED–INFO or visit www.MyMoney.gov and www.ConsumerFinance.gov for access to free and reliable financial information.

No young person should be saddled with excessive debt. In addition to striving to inform young people of the dangers of taking out too much consumer debt, my Administration launched the "Know Before You Owe" campaign, which is helping America's college students know their full range of options for financing a higher education. I also created the President's Advisory Council on Financial Capability for Young Americans to help educate our rising generation on important money management skills so they can live with security and make positive contributions to our economy. So more of our people can retire with dignity and stability, we established a new type of savings bond, *my*RA, to help more Americans easily save for retirement. And I signed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which, among other consumer protections, established the Consumer Financial Protection Bureau, the first agency solely dedicated to protecting consumers from unfair practices and predatory products in financial services.

As our economy continues to grow, we must preserve the basic notion in our country that hard work will be rewarded and that no matter who you are or where you come from, you can make it if you try. This month, let us encourage informed financial decisions and promote resources that help the American people make them, and let us reaffirm our belief in the idea that opportunity should be within reach for all who are willing to work for it.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2016 as National Financial Capability Month. I call upon all Americans to observe this month with programs and activities to improve their understanding of financial principles and practices.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–07959
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Presidential Documents

Proclamation 9414 of March 31, 2016

National Sexual Assault Awareness and Prevention Month, 2016

By the President of the United States of America

A Proclamation

At our country's core is a basic belief in the inherent dignity of every person. Too many women and men of all ages suffer the outrage that is sexual assault, and too often, this crime is not condemned as loudly as it should be. Together, we must stand up and speak out to change the culture that questions the actions of victims, rather than those of their attackers. As their relatives, friends, neighbors, and fellow Americans, it's on us to support victims and survivors by providing them with the care they need, bringing perpetrators to justice, and ensuring our institutions are held responsible and do not look the other way. This month, we reaffirm our commitment to shift the attitudes that allow sexual assault to go unanswered and unpunished, and we redouble our efforts to prevent this human rights violation from happening in the first place.

Preventing sexual assault begins with everyone getting involved in promoting healthy relationships and encouraging respect for the equality of others. For decades, Vice President Joe Biden has brought unmatched passion to this cause, working to pass the Violence Against Women Act in the Senate more than two decades ago, and continuing to fight today to transform the way we think and talk about sexual assault. In 2014, we launched the "It's On Us" campaign—an initiative that has worked with over 300 college campuses and engaged hundreds of thousands of people around our country who have taken a pledge to stand up and speak out to express moral outrage for this intolerable crime. We launched the White House Task Force to Protect Students from Sexual Assault that year as well, which continues to offer recommendations for how we can all contribute to a society that adequately prevents and responds to sexual assault.

My Administration is taking action to eliminate sexual assault in every corner of our country. This year, we announced new grants available for the National Sexual Assault Kit Initiative, a nationwide, community-based effort to end the backlog of untested rape kits—instrumental tools used to collect evidence, prosecute perpetrators, and bring closure to victims in the aftermath of an assault. These funds are supporting efforts to ensure victims are notified of the testing, connected to support services, and given the option of participating in the criminal justice process. Additionally, we have offered new tools and resources to help States and communities take advantage of the best available measures to prevent sexual violence. The Department of Justice issued new guidance for law enforcement on identifying and preventing gender bias in response to sexual assault and domestic violence. And I have directed military leadership to prioritize this issue and equip our men and women in uniform with the knowledge and tools necessary to combat sexual violence. From our military to our schools, and in law enforcement agencies in communities across America, we will keep working to address sexual violence and root it out wherever it exists.

Anyone can be a leader in the fight to prevent and end sexual assault. As employers, educators, parents, and friends, all Americans have an obligation to uphold the basic principle that every individual should be free from violence and fear. During National Sexual Assault Awareness and Prevention Month, we recommit to embracing each of our individual responsibilities to keep our communities safe from this crime and to stand with survivors and victims of sexual assault.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2016 as National Sexual Assault Awareness and Prevention Month. I urge all Americans to support survivors of sexual assault and work together to prevent these crimes in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

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Reader Aids

Federal Register

Vol. 81, No. 65

Tuesday, April 5, 2016

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FEDERAL REGISTER PAGES AND DATE, APRIL

18739–19020	1
19021–19466	4
19467–19856	5

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

3474..........19355

3 CFR

Proclamations:

9410..........19465
9411..........19849
9412..........19851
9413..........19853
9414..........19855

Executive Orders:

13723..........19017

Administrative Orders:

Memorandums:
Memorandum of March 18, 2016..........18739
Memorandum of March 29, 2016..........19015
Notices:
Notice of March 30, 2016..........19019

6 CFR

19..........19355

7 CFR

16..........19355

Proposed Rules:

271..........19500
278..........19500
319..........19060, 19063
1150..........18802

10 CFR

72..........19021

12 CFR

1026..........19467

14 CFR

39..........18741, 19022, 19024, 19467, 19470, 19472, 19482
71..........19484, 19485, 19486

Proposed Rules:

31..........19502
39..........18804, 18806, 19505, 19509, 19512, 19514, 19516

15 CFR

742..........19026
750..........19026
774..........19026

17 CFR

3..........18743
240..........18747

18 CFR

35..........18748
281..........18748
1307..........18748

19 CFR

4..........18748
10..........18748
12..........18749
24..........18749
122..........18749

20 CFR

404..........19032

Proposed Rules:

30..........19518

21 CFR

56..........19033
510..........18749
520..........18749
522..........18749
524..........18749
528..........18749
529..........18749
556..........18749
558..........18749

Proposed Rules:

56..........19066
330..........19069

22 CFR

205..........19355

24 CFR

5..........19355
92..........19355
570..........19355
574..........19355
576..........19355
578..........19355
1003..........19355

26 CFR

1..........18749

28 CFR

38..........19355

29 CFR

2..........19355
100..........19486

30 CFR

Proposed Rules:

550..........19718

31 CFR

Proposed Rules:

50..........18950
1010..........19086
1023..........19086

33 CFR

100..........19036, 19038
117..........18749, 18750, 19040, 19041, 19488

165....................19041, 19488
Proposed Rules:
117..............................19094
165..............................19097

34 CFR
75................................19355
76................................19355
Proposed Rules:
Ch. II...........................18818
612..............................18808
686..............................18808

36 CFR
Proposed Rules:
7..................................18821

37 CFR
42................................18750
Proposed Rules:
2..................................19296

38 CFR
50................................19355
61................................19355
62................................19355

40 CFR
9..................................19490
52 ....18766, 19492, 19495
Proposed Rules:
52 ....19097, 19098, 19519, 19526

42 CFR
Proposed Rules:
88................................19108

43 CFR
Proposed Rules:
3100.............................19110
3160.............................19110
3170.............................19110

44 CFR
67................................19498

45 CFR
75................................19043
87................................19355
1050.............................19355

47 CFR
73................................19432
74................................19432

49 CFR
1..................................19818

50 CFR
92................................18781
300....................18789, 18796
635..............................18796
648....................18801, 19044
660..............................19054
679....................19058, 19059
Proposed Rules:
17................................19527
216..............................19542
622..............................19547

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 1, 2016

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